



PLANNING COMMISSION

Wednesday, August 7, 2019

7:00 PM

Rockville City Hall

Mayor and Council Chambers

Meeting No. 21-2019

AGENDA

Gail Sherman, Chair

Don Hadley	Anne Goodman
Charles Littlefield	John Tyner, II
Sarah Miller	Rev. Jane E. Wood

Jim Wasilak, Staff Liaison

Cynthia Walters, Deputy City Attorney

Eliot Schaefer, Assistant City Attorney

1. Closed Session

- A. Vote to go into Closed Session pursuant to Section 3-305(b)(7) of the General Provisions Article of the Annotated Code of Maryland to consult with counsel to obtain legal advice regarding reconsideration of Site Plan STP2018-00354, 107 West Jefferson Street**

2. Recommendation to Board of Appeals

- A. Recommendation to the Board of Appeals on Special Exception Application SPX2019-00397 - to Establish a One-Bedroom Accessory Apartment in the Basement of an Existing House in the R-90 Zone at 24 Farm Haven Court; Shannon Lipp and Ari Rosenstein, Applicants**

3. Recommendation to Mayor and Council

- A. Recommendation to the Mayor and Council on Whether the Proposed Development Rights and Responsibilities Agreement for the Twinbrook Quarter Project is Consistent with the Comprehensive Plan**
-

4. **Work Session**
 - A. **Work Session 4: Comprehensive Plan, Draft for Planning Commission Public Hearing**

 5. **Commission Items**
 - A. **Staff Liaison Report**

 - B. **Old Business**

 - C. **New Business**

 - D. **Minutes Approval**

 - E. **FYI/Correspondence**

 6. **Adjourn**
-

HELPFUL INFORMATION FOR STAKEHOLDERS AND APPLICANTS

I. GENERAL ORDER OF SESSION FOR DEVELOPMENT APPLICATIONS

1. Staff presentation
2. City Board or Commission comment
3. Applicant presentation (10 min.)
4. Public comment (3 min, or 5 min for the representative of an association)
5. Planning Commission Discussion and Deliberation
6. Decision or recommendation by vote

The Commission may ask questions of any party at any time during the proceedings.

II. PLANNING COMMISSION BROADCAST

- Watch LIVE on Comcast Cable Rockville Channel 11 and online at: www.rockvillemd.gov
- Replay on Comcast Cable Channel 11:
 - Wednesdays at 7:00 pm (if no live meeting)
 - Sundays at 7:00 pm
 - Mondays, Thursdays and Saturdays at 1:00 pm
 - Saturdays and Sundays at 12:00 am (midnight)
- Video on Demand (within 48 hours of meeting) at: www.rockvillemd.gov/VideoOnDemand.

III. NEW DEVELOPMENT APPLICATIONS

- For a complete list of all applications on file, visit: www.rockvillemd.gov/DevelopmentWatch.

VI. ADDITIONAL INFORMATION RESOURCES

- Additional resources are available to anyone who would like more information about the planning and development review process on the City’s web site at: www.rockvillemd.gov/cpds.

Maryland law and the Planning Commission's Rules of Procedure regarding ex parte (extra-record) communications require all discussion, review, and consideration of the Commission's business take place only during the Commission's consideration of the item at a scheduled meeting. Telephone calls and meetings with Commission members in advance of the meeting are not permitted. Written communications will be directed to appropriate staff members for response and included in briefing materials for all members of the Commission.



Agenda Item #:	A
Meeting Date:	August 7, 2019
Responsible Staff:	Nicole Walters

SUBJECT:

Recommendation to the Board of Appeals on Special Exception Application SPX2019-00397 - to Establish a One-Bedroom Accessory Apartment in the Basement of an Existing House in the R-90 Zone at 24 Farm Haven Court; Shannon Lipp and Ari Rosenstein, Applicants

RECOMMENDATION

(Include change in law or Policy if appropriate in this section):

Staff recommends that the Planning Commission recommend to the Board of Appeals a finding of compliance with the Master Plan consistent with Section 25.07.08.h of the Zoning Ordinance.



Overview

Case: SPX2019-00397

Location: 24 Farm Haven Court

Staff: Nicole Walters
Planning and Development Services
240-314-8215
nwalters@rockvillemd.gov

Applicant: Shannon Lipp & Ari Rosenstein

Filing Date: June 24, 2019

Attachments: Board of Appeals Staff Report

Executive Summary

The applicant has submitted a Special Exception application, pursuant to Section 25.15.01 of the Zoning Ordinance, to allow for the establishment of a one-bedroom accessory apartment in the basement of the dwelling at 24 Farm Haven Court. Pursuant to Section 25.07.08.i, the Planning Commission will review the application at a public meeting and make a recommendation to the Board of Appeals, based on the compliance of the proposed special exception with the City of Rockville Master Plan. Final action on the application is taken by the Board of Appeals, subject to the findings of Section 25.15.01, as outlined in this report.

Recommendation

The Planning Commission recommend to the Board of Appeals a finding of compliance with the Master Plan consistent with Section 25.07.08.h of the Zoning Ordinance.

Property Description

The property is located in the North Farm subdivision and is identified as Lot 27, Plat One. The applicant's property is approximately 9,793 square feet. The property is improved with a two-story, single-family detached dwelling. The main dwelling is two (2) stories with an attached two-car garage with a rear brick patio. Parking for the property is located in the front yard. The parking pad (approximately 17' X 41') can accommodate at least two (2) vehicles.

Project Vicinity

Surrounding Land Use and Zoning

	Zoning	Planned Land Use	Existing Use
North	R-90	Detached Dwelling, - Restricted Residential	Single Unit Detached Dwelling
East	R-90	Detached Dwelling, - Restricted Residential	Single Unit Detached Dwelling
South	R-90	Detached Dwelling, - Restricted Residential	Single Unit Detached Dwelling
West	R-90	Detached Dwelling, - Restricted Residential	Single Unit Detached Dwelling

PROPOSED SITE USE

The accessory apartment is to establish an apartment for the applicant's father/father-law; however, there is no restriction on who will occupy it. The applicant was issued building permit application BLD2019-23724 in January to renovate the basement (minus the installation of the stove, pending special exception approval). The renovations approved under the building permit included removing one of the existing bathrooms and in its place adding a laundry area, installing a fully functional kitchen (minus the installation of the stove), and the installation of a closet. It is important to note that the existing basement already contained a bedroom and two (2) bathrooms. All occupants of the house will have access to the existing recreation area, existing bathroom, existing storage room and existing utility room.

An one-bedroom accessory apartment is defined by the City of Rockville Zoning Ordinance Section 25.03.02 as follows:

Accessory Apartment:

1. A second dwelling unit that is
 - (a) Part of and subordinate to an existing single-unit detached dwelling; and

- (b) Contains cooking, eating, sanitation, and sleeping facilities.
2. An accessory apartment is not an accessory use.

The proposed request meets this definition.

Previous Related Actions

A Building Permit Application BLD2019-23724 for Shannon Lipp and Ari Rosenstein was approved for a basement remodel of approximately 413 square feet to add a laundry area with stacked washer and dryer in the place of a bathroom, a full-size refrigerator, sink and cabinets.

Project Analysis

Master Plan Compliance

Pursuant to Section 25.07.08.h of the Zoning Ordinance, the Planning Commission is responsible for providing “consideration and recommendation to the Board of Appeals” on Special Exception applications. Specifically, the Commission’s recommendation is “based on the compliance of the proposed special exception with the Plan”.

As noted, the property is designated as Detached Residential Medium Density (DRM), by the Comprehensive Master Plan, and it is located within Planning Area 11 (North Farm) of the 2002 Comprehensive Master Plan. The North Farm neighborhood was developed during the late 1970s and early 1980s, and remains a quiet and well-maintained neighborhood.

The Planning Area 11 section of the 2002 Master Plan does not include any recommendations that specifically address accessory apartments or accessory dwelling units, or any use other than single-unit detached dwellings. The existing dwelling will continue to be used primarily as a single-family detached dwelling with the apartment being subordinate. In addition, the existing dwelling will retain the exterior appearance of a single-unit detached home after the accessory apartment is completed. Staff finds the proposal consistent with the current Master Plan.

The City is currently undergoing an update to its Comprehensive Master Plan, Rockville 2040, which includes recommendations for accessory apartments and accessory dwelling units. In the Land Use Element of the plan update, Policy 2 states, “Maintain large areas of Residential Detached land use, while allowing one additional accessory apartment or accessory dwelling unit per lot” (see p. 23). Based on these references, staff finds that the proposed special exception for an accessory apartment at 24 Farm Haven Court is not in conflict with either the existing or proposed update to the city’s Comprehensive Plan.

Community Outreach

In accordance with the requirements of the Zoning Ordinance, the applicant conducted the required Pre-application Area Meeting on April 19, 2019, and no one attended. The applicant conducted the required Post-application Area Meeting on July 16, 2019, and again no one

attended. Notification letters were sent by the applicant to the properties within the subject notification radius per the requirements of the Zoning Ordinance.

Letters of notification were again sent to abutting property owners within 1,250 feet of the property informing them of the application filing, pending Planning Commission meeting and Board of Appeals public hearing, at which time the request will be publicly heard and considered. A list of addressees, as submitted and provided by the applicant, to whom notices were mailed and hand-delivered, is contained in the project's application file and is available for public view and inspection.

Conclusion

Staff supports the Planning Commission recommending to the Board of Appeals, a finding of compliance with the Master Plan consistent with Section 25.07.08.h of the Zoning Ordinance.

Attachments

Attachment 2.A.a: Board of Appeals Staff Report (DOCX)



City of
Rockville
 Get Into It

**Board of Appeals Staff Report
 Special Exception Application SPX2019-00397,
 24 Farm Haven Court**

MEETING DATE: September 12, 2019

REPORT DATE: July 30, 2019

FROM: Nicole Walters, Senior Planner
 Planning and Development Services
 240.314.8215
 nwalters@rockvillemd.gov

APPLICATION DESCRIPTION: A request to allow for the establishment of a one-bedroom accessory apartment in the existing basement at 24 Farm Haven Court

APPLICANT: Shannon Lipp and Ari Rosenstein
 24 Farm Haven Court
 Rockville, MD 20852

FILING DATE: June 26, 2019

RECOMMENDATION: Approval subject to the conditions noted, to establish a one-bedroom accessory apartment in the basement of the existing main dwelling located at 24 Farm Haven Court.

EXECUTIVE SUMMARY: The applicant has submitted an application for Special Exception pursuant to Section 25.15.01 of the Zoning Ordinance. The Special Exception is to allow for the establishment of a one-bedroom, accessory apartment in the basement of the existing main dwelling at 24 Farm Haven Court. Pursuant to Section 25.07.08.i, the Planning Commission will review the application at a public meeting and make a recommendation to the Board of Appeals based on the compliance of the proposed special exception with the plan.



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RECOMMENDATION

Approval subject to the conditions noted on page 14 for Special Exception SPX2019-00397, to establish a one-bedroom accessory apartment in the basement located at 24 Farm Haven Court.

SITE DESCRIPTION

The property is located in the North Farm subdivision, identified as Lot 27, and contains approximately 9,793 square feet. The property is improved with a two-story, single-family detached dwelling with an attached two-car garage and a brick patio in the rear yard. Parking for the property is located in attached garage and driveway, which can accommodate a minimum of two (2) vehicles.

Location: 24 Farm Haven Court

Applicant: Shannon Lipp & Ari Rosenstein

Land Use Designation: Detached Residential – Medium Density (DRM) (see Exhibit 3)

Zoning District: R-90, Single Unit Detached, Restricted Residential (see Exhibit 4)

Existing Use: Single Unit Detached Dwelling

Parcel Area: 9,793 square feet

Subdivision: North Farm

Building Floor Area: Approximately 413 square feet for the proposed accessory apartment

Dwelling Units: 1

Building Height: No change in height needed to accommodate the accessory apartment

Parking: 1 space required for the accessory unit

Vicinity

Surrounding Land Use and Zoning			
Location	Zoning	Planned Land Use	Existing Use
North	R-90	Detached Dwelling, - Restricted Residential	Single Unit Detached Dwelling
East	R-90	Detached Dwelling, - Restricted Residential	Single Unit Detached Dwelling
South	R-90	Detached Dwelling, - Restricted Residential	Single Unit Detached Dwelling
West	R-90	Detached Dwelling, - Restricted Residential	Single Unit Detached Dwelling

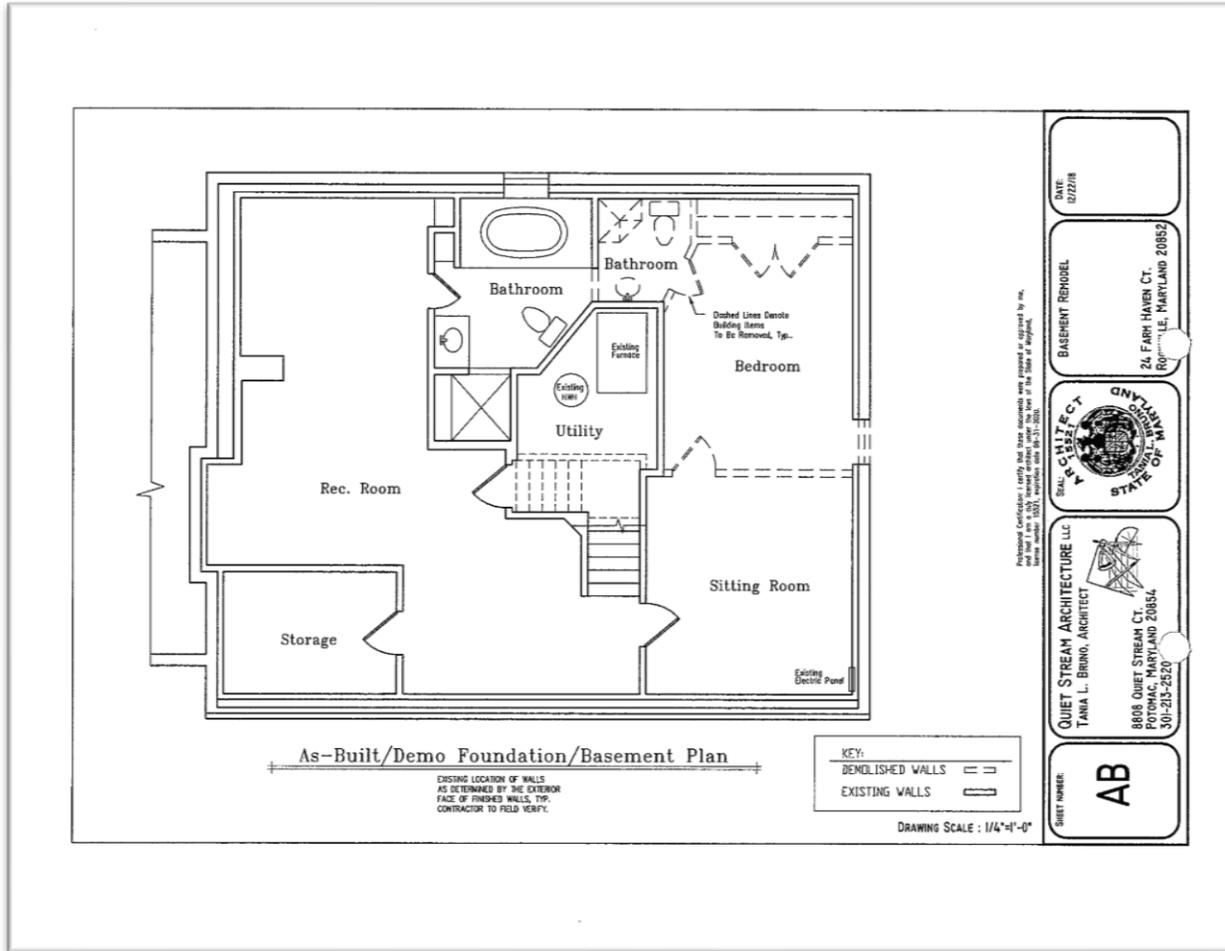
PROJECT DESCRIPTION

The applicants seek approval for the establishment of a one-bedroom accessory apartment that will be located in the basement of the existing main dwelling. The accessory apartment is being established to accommodate an apartment for the applicant's father/father-law. The applicant was issued building permit application BLD2019-23724 in January, 2019 to renovate the basement (minus the installation of the stove pending special exception approval). The renovations approved under the building permit included the following: removing one of the existing bathrooms and in its place adding a laundry area, installing a fully functional kitchen (minus the installation of the stove), and the installation of a closet. It is important to note that the existing basement already contained a bedroom and two (2) bathrooms. All occupants of the house will have access to the existing recreation area, existing bathroom, existing storage room and existing utility room. **(Exhibit 5).**

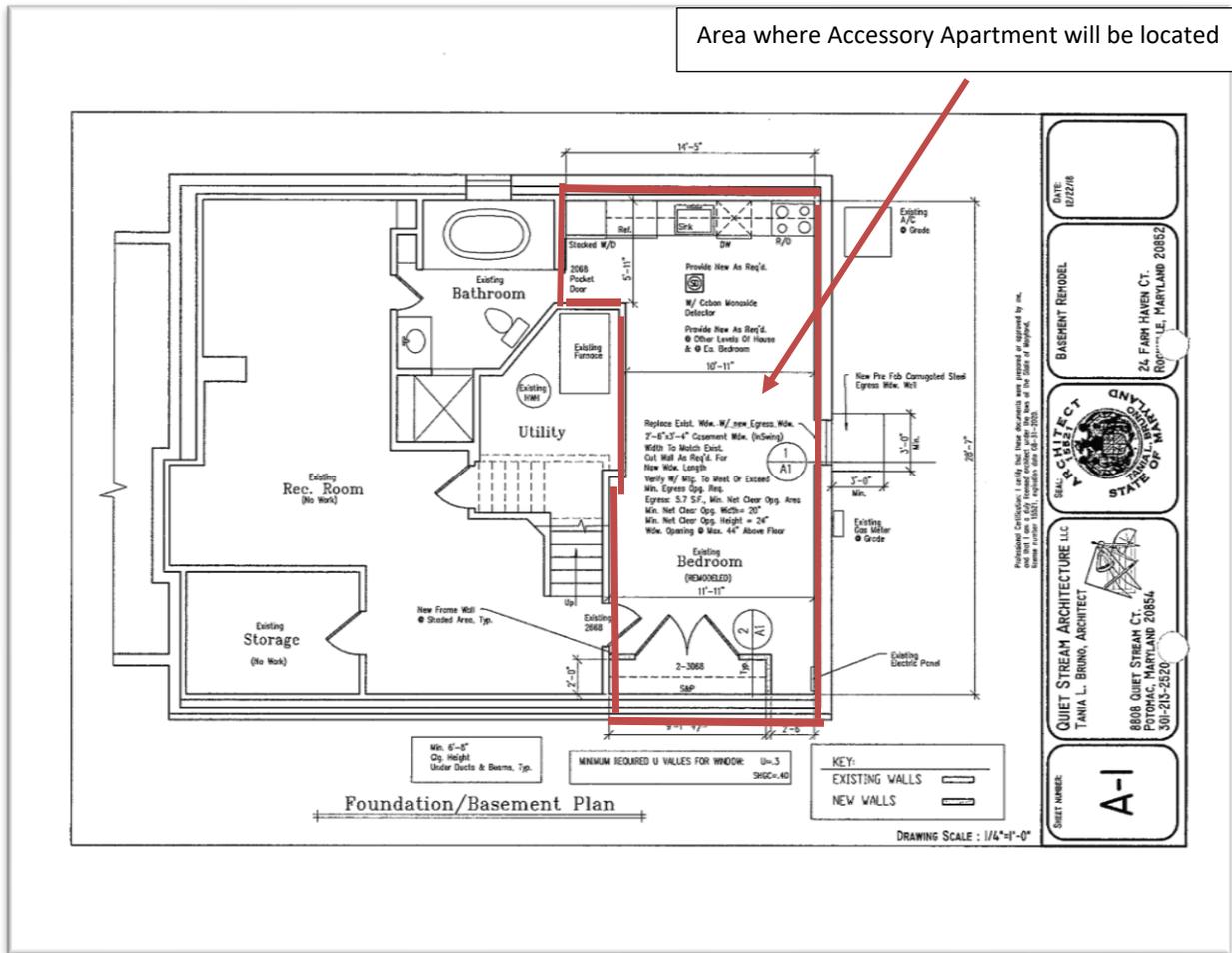
Previous Related Actions

- Building Permit Application BLD2019-23724, Shannon Lipp and Ari Rosenstein – basement remodel of approximately 413 square feet to add a laundry area with stacked washer and dryer in the place of a bathroom, a full-size refrigerator, sink, and cabinets.

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Existing Basement Layout



Proposed Basement Layout

PROJECT ANALYSIS

Initially, the applicants were issued a building permit (BLD2019-23724) to renovate their basement that included the installation of the stove. The applicants were informed by the city inspector during an inspection that the stove could not be installed without special exception approval for an accessory apartment. It was later determined that the zoning review of the building permit application was not performed. The applicants were able to complete the rest of the renovations to allow for occupancy of the basement, minus the installation of the stove, pending special exception approval. The applicant submits the subject application request to establish this space as a one-bedroom accessory apartment containing living, sanitation, and cooking facilities, as defined by the City of Rockville Zoning Ordinance, via installation of the stove/cooking unit.

Master Plan

The subject property is located within Planning Area 11 of the City's 2002 Comprehensive Master Plan. Planning Area 11 does not include any recommendations that specifically address Accessory Apartments/Accessory Dwelling Units. Rockville is currently undergoing an update to its Comprehensive Master Plan, Rockville 2040, which does include recommendations for Accessory Dwelling Units. In the Land Use Element of the plan update, Policy 2 states, "Maintain large areas of Residential Detached land use, while allowing one additional accessory apartment or accessory dwelling unit per lot (page 23)." The proposed request for 24 Farm Haven Ct. is not in conflict with the existing or proposed update to the City's Comprehensive Plan.

Land Use Map

The Plan's land use map designation of the property is for "detached residential (medium density)" land usage, which is also consistent with the property's R-90 zoning classification.

Master Plan Compliance

By allowing accessory apartments in residential zones as special exception uses, it is inferred from the ordinance that these residential uses are appropriate and compatible with other uses in the zone, if it can be shown that the proposed accessory unit will not have an adverse impact on neighboring properties.

Infrastructure/Adequate Public Facilities Standards (APFS)

While accessory apartments are not exempt from the provisions of the APFS, they are identified as a certain class of use to have little or no impact on public facilities. As such, accessory apartments are exempt from the APFO school capacity and transportation requirements.

It must also be noted that accessory apartments are not exempt from final adequacy check for water and sewer service.

Water and Sewer

The site's public water and sewer will not require major upgrade or retrofit to serve the applicant's accessory apartment. The applicant during the release of the building permit application received permits for the installation of all proposed plumbing and electrical work. The applicants will be required to obtain appropriate permits for the installation of the stove.

Zoning Ordinance Compliance

In addition to satisfying the above (general) “standards for granting” a special exception request, as per Section 25.15.02.a. of the Zoning Ordinance, the following “additional requirements” are applicable to the use as proposed:

- 1. An accessory apartment must be contained in the same building as a single unit detached dwelling and contain facilities for cooking, eating, sanitation and sleeping.**

The accessory apartment will be located in the basement of the existing main dwelling, which will contain a fully functioning kitchen i.e., a stove, sink, and dishwasher. A washer and dryer will also be located in the unit. All occupants of the house will have access to the existing bathroom, recreation area, storage area and utility room.

- 2. (a) Only one accessory apartment may be created in or attached to an existing one-family detached dwelling.**

The applicant’s accessory unit will be the only such use located on the subject property.

(b) Accessory apartments may only be located on a lot which: i) is occupied by a family of related persons and ii) which contains no other residential use; iii) does not contain rooms for rent or a boarding house; and iv) does not contain a major home-based business enterprise.

The applicants affirm that she and her husband are the sole owners and occupants of the subject property. There will be no other accessory apartment or rooms for rent in the applicant’s home. They do not propose to convert other portions of the home for rental purposes, nor will the dwelling be used as a boarding house. The applicants further affirm that the accessory unit will be used to accommodate their father/father-in law.

- 3. Ownership Requirements – The owner of a lot on which an accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding six months in any 12-month period. The period of temporary absences may be increased by the Board at any time upon finding that a hardship would otherwise result. Any request for an extension of the period of temporary absence made subsequent to the initial grant of special exception shall be made in compliance with procedures for a minor modification of a condition of special exception in Section 25.15.01.b (1).**

The applicants affirm that the dwelling located at 24 Farm Haven Court is their primary residence and that they are the owners of the property. The applicants have lived at this location since 2018 and will continue to reside in the main dwelling.

- 4. Development Requirements – (a) Both the main dwelling and the accessory apartment must comply with all appropriate standards, including off-street parking requirements. (b) No variance may be granted to accommodate an accessory apartment.**

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There are no plans or need to alter the existing driveway to create additional on-site parking. The driveway, as designed, can easily accommodate a minimum of two (2) vehicles. As of this writing, the subject property is in substantial compliance with off-street parking requirements and all other known development standards and regulations of the R-90 Zone. Section 25.16.03 of the Zoning Ordinance requires a minimum of two (2) on-site parking spaces be provided for single-family residential dwellings. As per the Ordinance, a one-bedroom accessory apartment requires one (1) additional parking space to accommodate said use. There is enough parking to accommodate the main dwelling and the accessory unit.



Parking Area at 24 Farm Haven Court

In accordance with Section 25.15.02.a.8. of the Zoning Ordinance entitled *Additional Conditions*, the Board of Appeals may protect and limit adverse impacts on adjacent properties and the neighborhood, by limiting the total number of vehicles that may be utilized and parked on the street, by the occupants of both the accessory apartment and the main dwelling. The Board can allow, as a condition of approval, the resident of the accessory unit to park a vehicle on the street, if it deems additional parking spaces are needed, thus eliminating the need to widen the existing driveway to accommodate three (3) vehicles. The parking is accessed, via the front of the house. Currently, the applicants park their cars in the driveway (approximately 17' X 41') or in the garage. The applicant's father/father in-law has the option of parking in the driveway or in the front of the house. The driveway will support the additional parking required for the unit. Visitors do have the ability to use on-street parking. Should the proposed situation change, the existing driveway can still support two (2) cars. Staff recommends that the on-site driveway not be modified /

widened at this time. Lastly, no variance is needed to establish the proposed accessory apartment.

5. Design Requirements

- (a) Any separate entrance to the accessory apartment must be located so that the appearance of a single-unit detached dwelling is preserved.**

The accessory apartment does not have a separate entry/exit. The existing front door entry will serve as access to the accessory apartment.

- (b) All external modifications and improvements to the single-unit detached dwelling in which the accessory apartment is to be created or to which it is to be added must be compatible with the existing dwelling and surrounding properties.**

There are no external modifications being proposed.

- (c) The Accessory apartment must show and utilize the same street address (house number) as that of the main dwelling.**

No separate address will or can be used for the accessory apartment.

- (d) The accessory apartment may not house more than three (3) persons and must be subordinate to the main dwelling.**

The applicant has been made aware of the occupancy restrictions and that the proposed accessory unit is and will be a subordinate to the main dwelling.

COMMUNITY OUTREACH

In accordance with the requirements of the Zoning Ordinance, the applicant conducted the required Pre-application Area Meeting on April 19, 2019, as well as the required Post-application Area Meeting on July 16, 2019. No one attended either meeting. Notification letters were sent by the applicant to the properties within the subject site area for both area meetings, per the requirements of the Zoning Ordinance.

Letters of notification were sent to property owners within 1,250 feet of the property informing them of the application, pending Planning Commission meeting and Board of Appeals public hearing. A list of addressees, as submitted and provided by the applicant, to whom notices were mailed and hand-delivered is contained in the project's application file, available for public view and inspection.

FINDINGS

As per Section 25.10.03 of the Zoning Ordinance, accessory apartments are permitted in the R-90 Zone by grant of special exception. In accordance with Section 25.15.01 of the Ordinance, the Board of Appeals shall not grant any petition for special exception unless it finds from a preponderance of the evidence of record that:

- 1. The proposed use will not adversely affect the City's Master Plan (the Plan), this Chapter**

(Zoning Ordinance), or any other applicable laws; and

The use does not violate or adversely affect the Plan or any known laws of the City of Rockville. The land use designation of the property as assigned by the Plan is for single-unit detached dwelling-Medium Density (DRM) residential land use, which is also consistent with the property's R-90 Zone classification. By allowing accessory apartments in residential zones as special exception uses, it is inferred from the ordinance that these residential uses are appropriate and compatible with other uses in the zone, if it can be shown that the proposed accessory unit will not have an adverse impact on neighboring properties. There will be no external indication of the accessory apartment other than perhaps an additional vehicle in the driveway, so there should not be any adverse impact on neighboring properties.

2. The proposed use at the location selected will not: a) Adversely affect the health and safety of residents in the area; or b) Overburden existing and programmed public facilities as provided in Article 20 of this Chapter and as provided in the adopted Adequate Public Facilities Standards; or c) Be detrimental to the use or development of adjacent properties or the neighborhood; or d) Change the character of the neighborhood in which the use is proposed, considering services currently required, population density, character, and number of similar uses; and e) constitute a nuisance because of noise, traffic, number of people, or type of physical activity; and

As previously noted, the accessory apartment is being established to accommodate the applicant's father/father-in-law. The unit is being occupied by a single individual, hence vehicular traffic that would be generated by one additional person would be consistent with those of other vehicle trips generated from similar single-family dwellings located within the subject area. It is important to note that the occupant has been living in the basement for at least six months (since the renovations were complete) without any known disruptions. Staff has found no evidence that allowing for the full accessory apartment would pose any concern to the health, safety and welfare of persons living or working in the community. The subject property is approximately 9,793 square feet in size and is slightly larger than the minimum 9,000 square foot lot in the R-90 zone in which it is located. There will be no external evidence of the existence of the accessory apartment.

The site is currently serviced by public water and sewer, which will not require an upgrade or retrofit to serve the accessory apartment. There is no evidence that there will be any substantive increase in vehicular and or pedestrian traffic generated from the applicant's home, due to the formalization of the accessory apartment. As noted, the applicant will be required to obtain appropriate permits to install the stove. It was determined during the building permit review that existing storm drainage, sanitary sewer, and other public improvements within the subject site area would not require improvements or retrofit due to the formal establishment of the accessory apartment. This understanding will continue with the installation of the stove.

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The property is located within a well-established residential neighborhood, comprised of single-family detached dwellings. The owners have been advised that the accessory unit must be operated and maintained in accordance with all applicable requirements of the Zoning Ordinance. Such adherence serves to ensure that the health, welfare, and safety of the community will not be adversely impacted by the proposed use.

There is no evidence that the availability and/or delivery of public services within the subject site area will be altered or adversely impacted by the requested site use, i.e., public schools, police, fire and rescue, trash collection, street maintenance and repair, snow removal, etc. Since the city's Zoning Ordinance restricts the number of persons who can legally occupy the accessory unit, the limited number of persons (i.e., three) who can legally occupy the subject unit would not substantively impact the population density of the site area. It is also important to note that the applicant has represented in the request that the accessory unit will be only be occupied by one person.

Since accessory apartments are land uses permitted only by a grant of special exception, there is no evidence that the formal establishment of the applicant's accessory unit will bring about the proliferation of similar uses within the site area. Based on available information, staff notes that there have not been any other special exceptions granted for the establishments of an accessory apartment within the general site area.

3.The proposed use complies with the requirements of the Ordinance, including, but not limited to, the special requirements contained in Section 25.15.02 and the general purposes of the Ordinance contained in Section 25.01.02.

Submission of the subject special exception request represents that applicant's efforts to satisfy and comply with all Ordinance requirements to legally establish an accessory apartment on the subject property located in the R-90 Zone.

Lastly, in accordance with Sec 25.15.02.a.6. of the Zoning Ordinance, the Board of Appeals must make the following findings in addition to all the other noted findings and requirements in granting the subject special exception request:

1.That such use will not constitute a nuisance because of traffic or number of people, and will cause no objectionable noise, odors, or physical activity.

Based on the applicant's intended use of the accessory apartment, there is no evidence that occupancy of the accessory apartment will generate excessive amounts of vehicular traffic. The establishment of the accessory apartment will allow the applicant's father to live in close proximity to family members while giving him the independence of having his own living quarters. This unit is not intended to be used as rental income. The intended occupant of the accessory apartment has occupied the space for at least six months without any known

Special Exception Application SPX2019-00397, Shannon Lipp and Ari Rosenstein
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complaints from the neighbors. The occupant will have a vehicle, which can easily be accommodated by the existing driveway.

As of writing of this staff report, staff has found no evidence that the establishment of this accessory apartment will create or cause excessive site activity, heighten noise levels, or generate added vehicular traffic within the neighborhood.

2. That such use will not adversely impact parking or the traffic situation in the neighborhood.

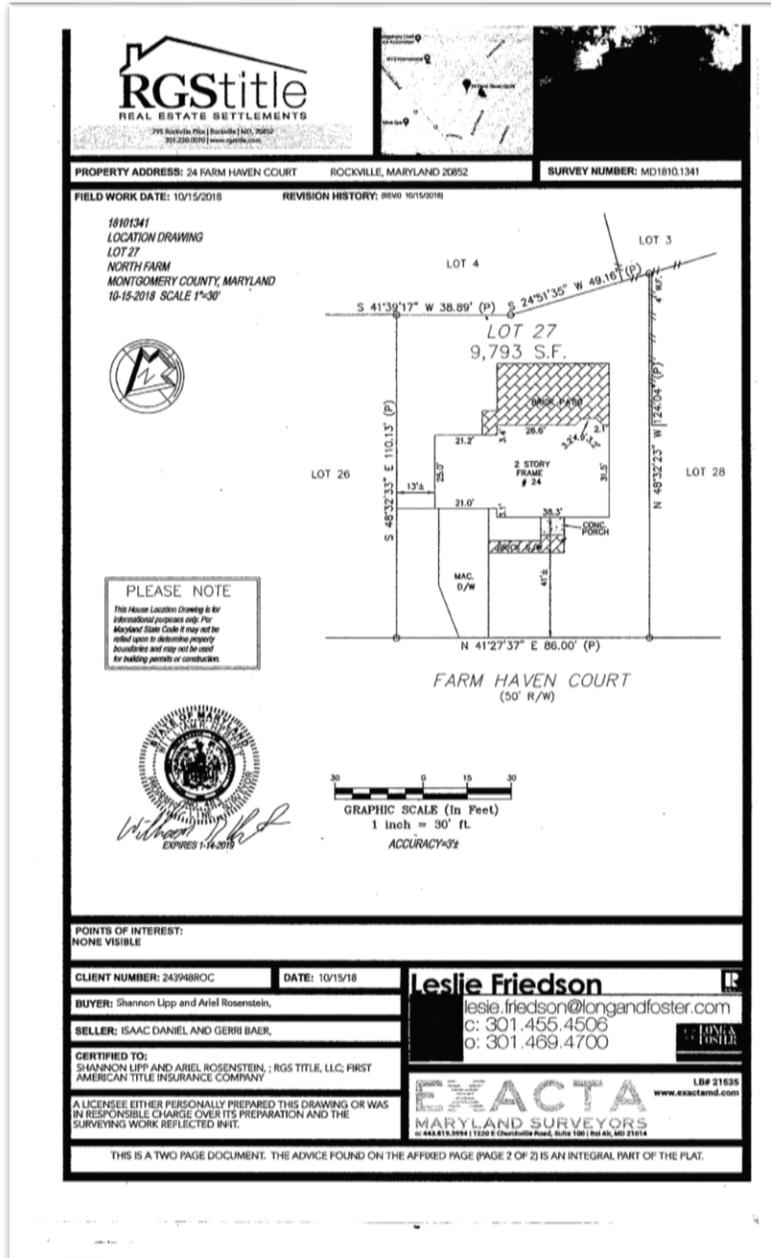
As noted, the applicant has the ability to park a minimum of two (2) vehicles on-site and two (2) vehicles in their garage. There is no evidence that this basement accessory apartment will alter or adversely impact parking patterns within the subject site area. On those occasions when the applicant and/or the resident of the accessory unit have guests, there should be sufficient on-street parking to accommodate such short-term parking needs.

RECOMMENDED CONDITIONS

Approval of the Special Exception SPX2019-00397 is recommended, subject to the following conditions:

1. The accessory apartment must be established and utilized as represented in the application request as submitted.
2. The accessory apartment cannot house more than three (3) people.
3. The special exception is granted solely to the property owners/applicants and is not transferable with the property in the event of change in property ownership. Said special exception expires if the owners sell the property or if the applicants no longer occupy any portion of the dwelling.
4. If the special exception expires, the accessory apartment must be removed and dismantled or otherwise rendered inoperable within thirty (30) days of the date of expiration.
5. The owners/applicants must comply with all applicable regulations governing accessory apartments, as well as rental licensing of the unit should the unit be rented in the future.
6. The above noted conditions of approval must be duly recorded among the land records of Montgomery County so that any future purchaser of the subject property is aware that the accessory apartment must be removed or a new special exception application must be obtained and approved upon transfer of ownership (Staff will provide this form).

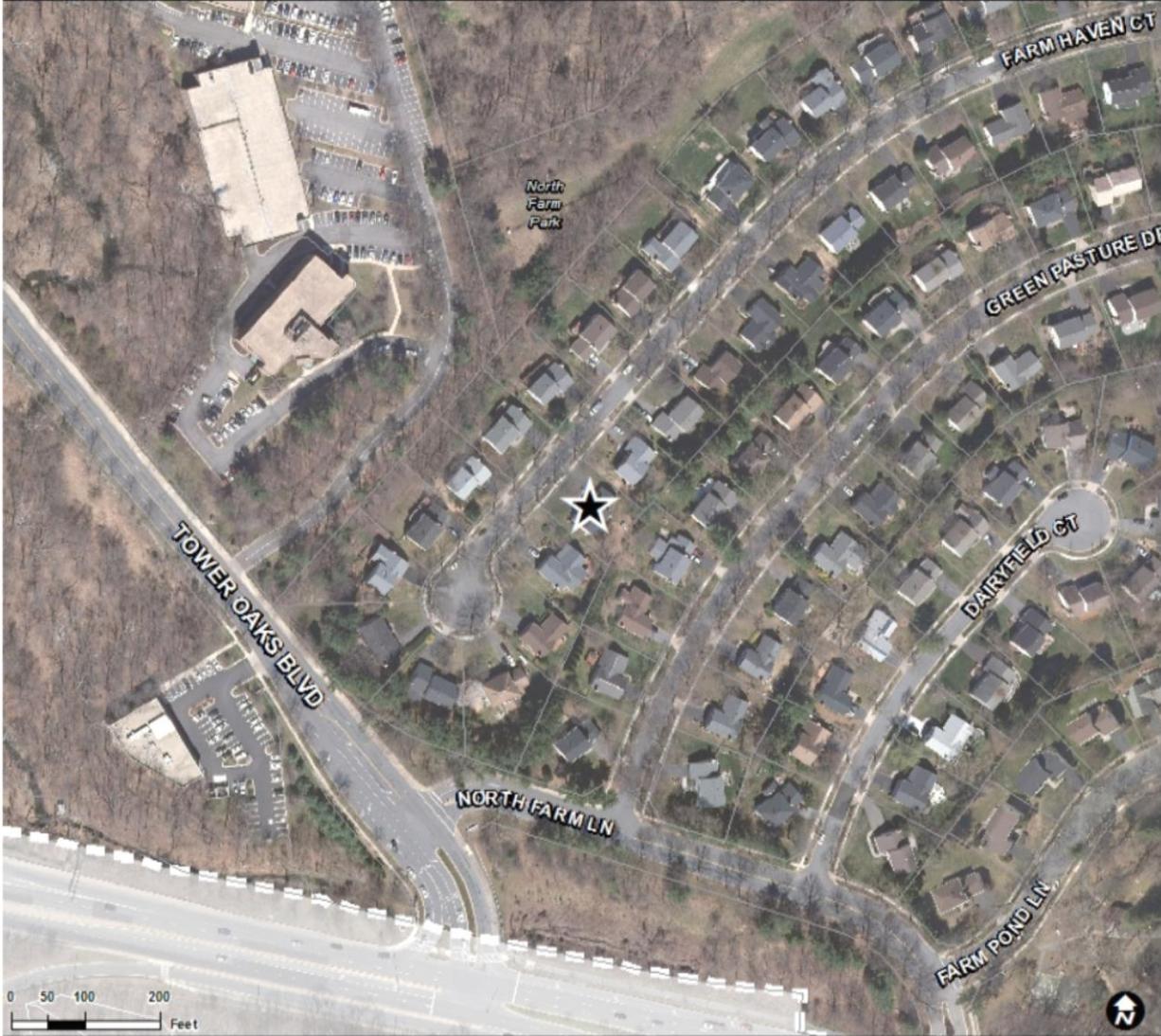
Note: Some of the listed conditions may remain applicable, while others may become moot with the adoption of Zoning Text Amendment TXT2019-00255.



Attachment 2.A.a: Board of Appeals Staff Report (2734 : SPX2019-00397 - Accessory Apartment in the Basement at 24 Farm Haven Court)

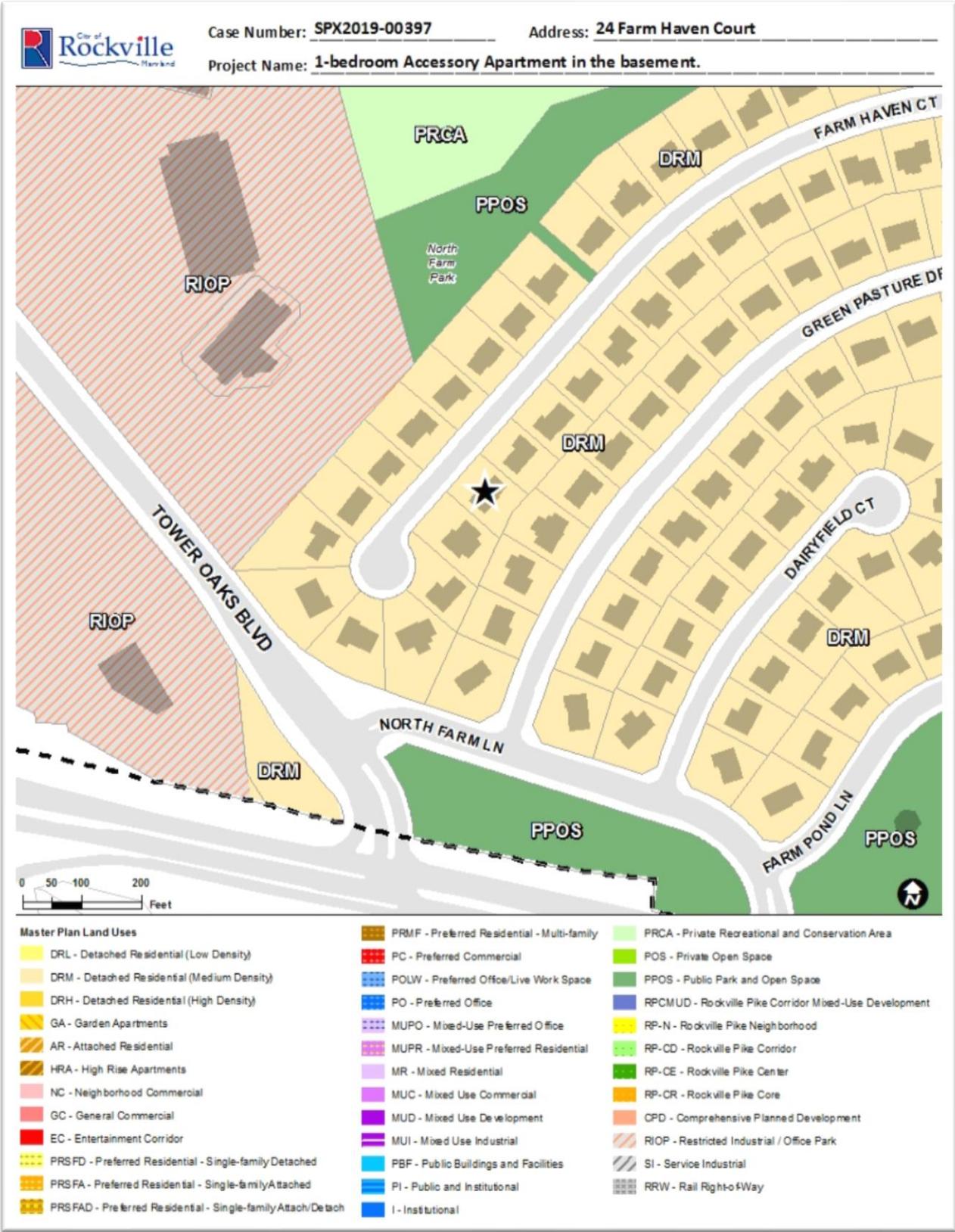
Exhibit 2: Aerial Map

 Case Number: SPX2019-00397 Address: 24 Farm Haven Court
Project Name: 1-bedroom Accessory Apartment in the basement.



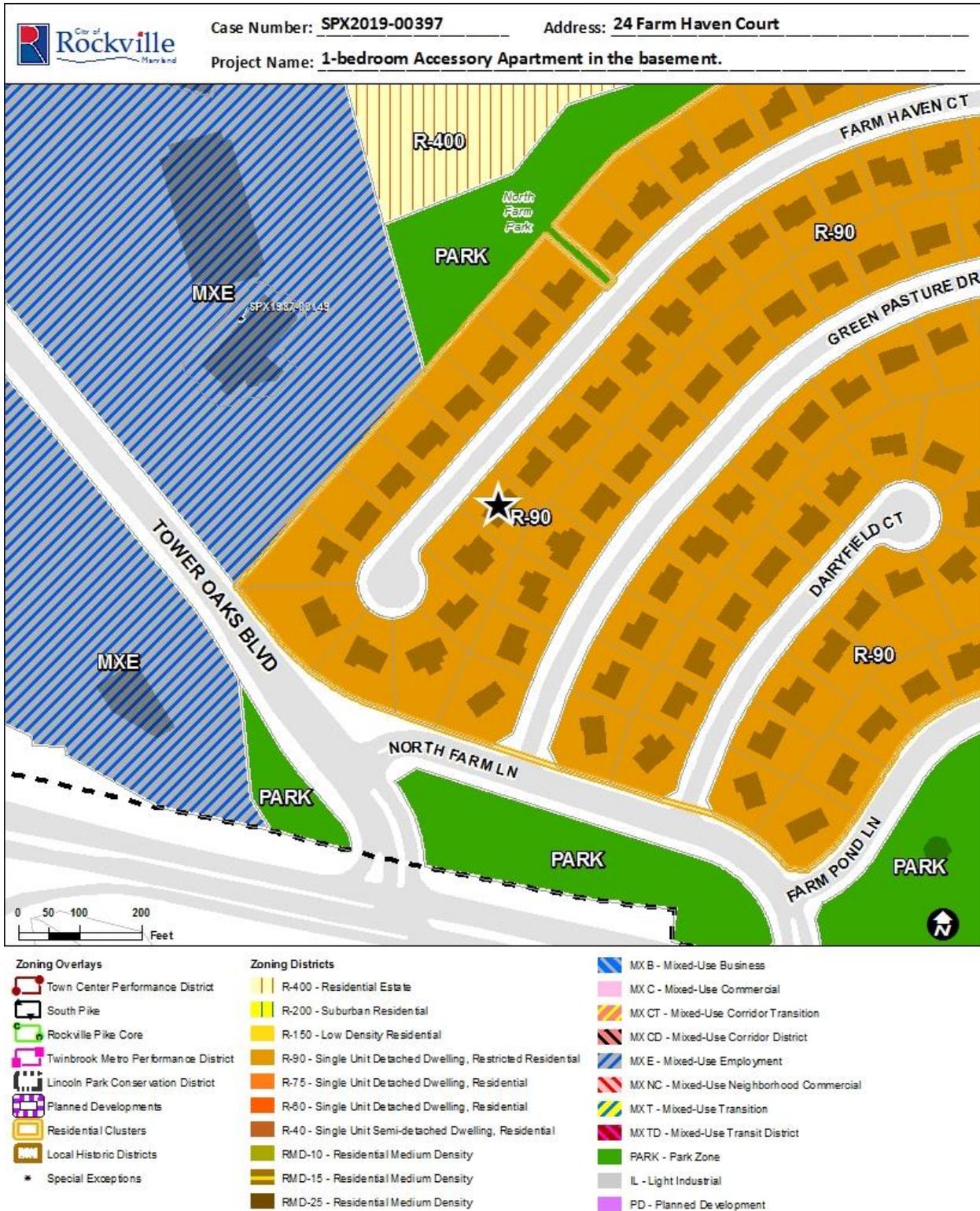
Attachment 2.A.a: Board of Appeals Staff Report (2734 : SPX2019-00397 - Accessory Apartment in the Basement at 24 Farm Haven Court)

Exhibit 3: Planned Land Use Map



Attachment 2.A.a: Board of Appeals Staff Report (2734 : SPX2019-00397 - Accessory Apartment in the Basement at 24 Farm Haven Court)

Exhibit 4: Zoning Map



Attachment 2.A.a: Board of Appeals Staff Report (2734 : SPX2019-00397 - Accessory Apartment in the Basement at 24 Farm Haven Court)



Agenda Item #:	A
Meeting Date:	August 7, 2019
Responsible Staff:	Jim Wasilak

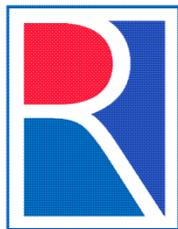
SUBJECT:

Recommendation to the Mayor and Council on Whether the Proposed Development Rights and Responsibilities Agreement for the Twinbrook Quarter Project is Consistent with the Comprehensive Plan

RECOMMENDATION

(Include change in law or Policy if appropriate in this section):

Staff recommends that the Planning Commission make a determination that the proposed DRRA is consistent with the Comprehensive Plan, and recommends that the Planning Commission forward the determination to the Mayor and Council.



City of
Rockville
Get Into It

Planning Commission Staff Report

MEETING DATE: August 7, 2019

REPORT DATE: August 1, 2019

RESPONSIBLE STAFF: Jim Wasilak, AICP
Zoning and Development Manager
240.314.8211
jwasilak@rockvillemd.gov

SUBJECT: Recommendation to Mayor and Council on Whether the Proposed Development Rights and Responsibilities Agreement (DRRA) for the Twinbrook Quarter Project (DRA2020-00001) is Consistent with the Comprehensive Plan

BACKGROUND

Under the authority of the Land Use Article of the Annotated Code of Maryland, a local government is authorized to enact a law to establish procedures and requirements for the consideration and execution of a Development Rights and Responsibilities Agreement (DRRA).

A DRRA is an agreement between a person having an interest in real property and the local government to establish the conditions under which development may proceed.

DRRA Ordinance

On April 8, 2019, the Mayor and Council adopted Ordinance No. 10-19, which added Chapter 7.5, Development Rights and Responsibilities Agreements to the City Code (see Attachment A). The purpose of the new chapter is to provide an additional technique for land development consistent with the Comprehensive Plan that provides certainty and stability for developers of projects that have an extended build-out period. The primary component of the DRRA is that certain development regulations of the City are “frozen” upon execution of the DRRA, allowing a project to complete construction based on the standards in effect at the time of the DRRA execution. A DRRA does not prevent compliance with laws or regulations enacted after the DRRA agreement if such laws or regulations are essential to ensure the public health, safety or welfare.

Per the City’s ordinance, a proposed DRRA is referred to the Planning Commission for a determination on whether the proposed agreement is consistent with the Comprehensive Plan. The Mayor and Council must hold a public hearing and determine whether to enter into the DRRA, either as submitted or with amendments. The Mayor and Council may also decline to enter into the DRRA. A DRRA is approved by resolution of the Mayor and Council, along with an authorization to the City Manager to enter into the agreement.

Proposed DRRA

The proposed DRRA for the Twinbrook Quarter Project Plan PJT2018-00011 has been submitted by the developer of the property for review and approval. City staff from multiple departments have reviewed and discussed the proposed DRRA, resulting in the document (see Attachment B).

The draft agreement is comprised of articles based on a particular topic, and includes a series of definitions that apply within the agreement, as well as a restatement of key aspects of the Project Plan approval (Resolution No. 7A-19). Foremost among these is the Champion Project designation by the Mayor and Council, having determined that the Project Plan met the criteria by providing open space, employment opportunities and vehicular, pedestrian and bicycle safety measures well in excess of minimum requirements.

The DRRA also outlines public improvements that will be constructed by the developer in association with the project development. These include mitigation of sewer capacity deficiencies outlined in the Water and Sewer Authorization (WSA) for the project. One such improvement is significant to both the project and the City, and will be covered by an Implementation Agreement, as specified in the draft DRRA. Because this improvement is critical to the project’s infrastructure as well as for sewer capacity for other projects in the City in this area, the agreement specifies outcomes based on whether the City or the developer undertakes the improvement, and the related deadlines for construction of the improvement.

These provisions are not part of the Project Plan approval and are requirements that are imposed on the developer by the DRRRA.

The DRRRA is proposed to be effective for the same period of time as the Project Plan PJT2018-00011, which was 30 years from the date of adoption of Resolution No. 7A-19, which would be April 29, 2049.

Article VII of the proposed DRRRA lists the effect of the agreement with regard to the City's development laws, which is to "freeze" them in place as they exist at the time of execution of the DRRRA, so that the project may be developed under the same set of laws during its extended build-out. These include the Zoning Ordinance and related documents such as the APFS (Adequate Public Facilities Standards), as well as development-related chapters of City Code, including those related to stormwater management, erosion and sediment control, moderately-priced dwelling units, forest and tree preservation, and sewer and water service, among others. The City and developer have agreed that any changes to Chapter 5, Buildings and Building Regulations, would apply to the project, as these amendments relate directly to the public health, safety and welfare.

The proposed DRRRA includes a provision that allows the City to apply laws that are enacted after the DRRRA is in place to the project if they are essential to ensuring the public health, safety or welfare. There is also a provision that allows for changes to development laws enacted after the effective date of the DRRRA to apply to the project by written mutual consent.

Major amendments that are approved by the Mayor and Council and increase the amount of vehicle trips beyond the trip cap limitation contained within the Project Plan resolution, or increase the amount of development beyond the amount approved by the Mayor and Council in the original Project Plan, will be subject to the development laws in effect at the time of the amendment approval. Minor amendments to the Project Plan that do not exceed either of those limitations would be governed by the provisions of the DRRRA.

The DRRRA clearly states that the agreement "vests" the development project under the laws in effect at the time of the agreement, but does not relieve the developer of any approvals that are required by the City's development laws or those of any other governmental authority that may apply. The DRRRA also addresses the effects of a potential future moratorium on the development by stating that a moratorium that impacts the active development of the property will cause the agreement to be extended one day for each day that the moratorium is in effect, with a corresponding extension of any deadline for constructing public improvements.

DISCUSSION:

The Planning Commission's role is to determine whether the proposed DRRRA is consistent with the City's Comprehensive Plan. Staff has evaluated the DRRRA, and offers the following for consideration.

The Mayor and Council approved the Project Plan for Twinbrook Quarter, and in doing so, made the required finding that the project is not in conflict with the Comprehensive Plan. Specifically, findings were made based on the recommendation of the 2016 Rockville Pike Plan, as follows:

4. The Application will not be in conflict with the Master Plan: The Property is subject to the Rockville Pike Plan adopted by the Mayor and Council on August 1, 2016. The Project Plan Application satisfies both the general corridor planning principles and the principal land use recommendations for the Property identified in the recently approved Rockville Pike Plan. The Property is located in the South Pike area of the Rockville Pike Plan, which is recognized as having “the greatest potential to receive the bulk of the population growth within the corridor, as well as a significant portion of the City’s population growth, over the next few decades,” as well as “the most potential to transform from a commercial suburban development pattern into an urban center, complementing Rockville Town Square to the north.” (p. 1-7). The Rockville Pike Plan designates the portion of the Property between Halpine Road and Congressional Lane (1580 – 1616 Rockville Pike) for Core (transit-oriented) land uses, while the portion of the Property north of Congressional Lane is designated for Corridor (mobility-oriented) land uses. The Project is designed to leverage the Property’s transit-oriented location to allow for an active urban mixed-use redevelopment, which is consistent with the Rockville Pike Plan “vision ... for a livable, desirable, and economically vibrant environment defined by thoughtful urban design, multi-modal transportation, active public spaces, and green spaces.” (p. 4-21).

In addition, the Mayor and Council found that the project also met multiple corridor planning principles and land use goals stated in the plan.

As noted previously, the Project Plan also met the Champion Project criteria, which is found in the Rockville Pike Plan as well as the Zoning Ordinance. While the Project Plan finding is that the project is not in conflict with the Plan, staff finds that this project meets the more stringent standard of being consistent with the Plan, in that it meets many of the recommendations contained in the 2016 Rockville Pike Plan for this area.

The proposed DRRA is intended to facilitate implementation of the approved Project Plan PJT2018-00011 for Twinbrook Quarter by permitting application of the City’s development laws as they exist at the time of execution of the DRRA. In return, the City is obtaining additional assurances related to the buildout of the necessary sewer capacity improvements as well as the additional assurance that the Plan’s vision for this property and associated infrastructure will be implemented.

RECOMMENDATION:

Staff finds the proposed DRRA to be consistent with the Comprehensive Plan for the reasons stated above, and recommends that the Planning Commission determine that the proposed DRRA is consistent with the Comprehensive Plan and forward the determination to the Mayor and Council.

Attachments

Attachment 3.A.a: Ordinance No. 10-19, to Enact a new Chapter 7.5, Development Rights and Responsibilities Agreements (PDF)

Attachment 3.A.b: Draft DRRA For Twinbrook Quarter 7-31-19 (PDF)

Jim Wasilak
Jim Wasilak, Chief of Zoning 8/1/2019

Ordinance No. 10-19

ORDINANCE: To enact a new Chapter 7.5 in the Rockville City Code entitled "Development Rights and Responsibilities Agreements"

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE,

MARYLAND, as follows:

That a new Chapter 7.5 of the Rockville City Code entitled "Development Rights and Responsibilities Agreements" is enacted to read as follows:

CITY OF ROCKVILLE

CHAPTER 7.5

DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENTS

Sec. 7.5-1 Definitions

In this Chapter the following words have the meanings indicated:

Agreement means a development rights and responsibilities agreement.

Applicant means any individual, firm, corporation, partnership, association, society, syndication, trust, or other legal entity that files a petition to enter into an agreement.

Champion Project has the same meaning as set forth in Section 25.03.02 of the Zoning Ordinance for the City of Rockville.

Chief of Zoning the individual holding the position of Chief of Zoning within the City's Department of Community Planning and Development Services ~~or such individual's designee.~~

Comprehensive Plan means the current City of Rockville Comprehensive Plan as adopted by the City under the provisions of Title 3 of the Land Use Article of the Annotated Code of Maryland. For the purposes of this definition, "comprehensive plan" includes the general plan, master plan, neighborhood plans, and the like as adopted in accordance with the applicable provisions of State law.

Enhanced Public Benefit means a public infrastructure improvement or other public benefit, to be provided at the Applicant's expense, that benefits the public and is in excess of the public infrastructure improvements and other public benefits that an Applicant would otherwise be required to provide under the applicable law during the course of development of the property. An enhanced public benefit includes, but is not limited to, providing:

- (i) More than the required amount of open space, parkland, or afforestation;
- (ii) More than the required amount of multimodal transportation facilities;

- (iii) Traffic safety and capacity improvements that ~~allows~~ allow for additional more traffic capacity than what is otherwise projected after full buildout of the development in excess of the capacity required for the development of the property;
- (iv) Infrastructure improvements that allows for additional water and sewer capacity in excess of the capacity required for the development of the property;
- (v)(iv) More than the required amount of stream restoration;
- (vi)(v) More than the required amount of affordable housing;
- (vii)(vi) Recreational facilities; and
- (viii)(vii) Public safety facilities; and
- (viii) Off-site water or sewer infrastructure improvements that an Applicant is required to provide (i) that are constructed and operational at an earlier time than would otherwise be required or reasonably expected in considering the nexus of the improvement to the project and the project buildout and (ii) which alleviates an otherwise existing deficiency that would prevent other development from being approved.

Parties means the Mayor and Council and the applicant.

Planning Commission means the City of Rockville Planning Commission.

Property means the parcel or parcels of real property to be developed which are the subject of an agreement.

Sec. 7.5-2 Purpose.

The purpose of this Chapter is to provide an additional technique for land development that is consistent with the Comprehensive Plan and is authorized by Title 7, Subtitle 3 of the Land Use Article of the Annotated Code of Maryland. It is a purpose of this Chapter to provide certainty and stability to developers, whose projects may take many years to complete, while allowing the City to negotiate enhanced public benefits. This Chapter is intended to enhance development flexibility, innovation, and quality while ensuring protection of the public interest, health, safety, and welfare.

Sec. 7.5-3. Authority; Public Principal.

The Mayor and Council may exercise the authority granted by Title 7, Subtitle 3 of the Land Use Article of the Annotated Code of Maryland to enter into agreements and shall act as the public principal.

Sec. 7.5-4. Petition.

(A) Any person having a legal or equitable interest in real property in the City of Rockville may petition the Mayor and Council to enter into an agreement.

(B) The petition must be filed with the Chief of Zoning on forms provided by the City and must be accompanied by a fee as determined by resolution of the Mayor and Council.

(C) The petition must include a copy of the proposed agreement.

(D) All persons having a legal or equitable interest in the property, including, but not limited to, all owners, contract purchasers, and lienholders, must authorize the petition.

Sec. 7.5-5. Contents of Development Rights and Responsibilities Agreement.

(A) At a minimum, an agreement must contain the following:

(1) A lawyer's certification that the applicant has either a legal or equitable interest in the property;

(2) The names of all persons having a legal or equitable interest in the property, including, but not limited to, owners, contract purchasers, and lien holders;

(3) A legal description of the property that is subject to the agreement;

(4) The duration of the agreement;

(5) The permissible uses of the property;

(6) The density or intensity of use of the property;

(7) The maximum height and size of structures to be located on the property;

(8) A description of permits required or already approved for the development of the property;

(9) A statement that the proposed development plan is consistent with the Comprehensive Plan and all applicable City development regulations;

(10) A description of the conditions, terms, restrictions, or other requirements determined by the City to be necessary to ensure the public health, safety, or welfare;

(11) For a development that has been designated as a Champion Project or is seeking designation as a Champion Project, a statement as to how the development meets the Champion Project criteria; and for all other projects Aa description of the enhanced public benefit that is consideration for the agreement;

(12) To the extent applicable, provisions for the:

(a) Dedication of a portion of the property for public use;

(b) Protection of sensitive areas;

(c) Preservation and restoration of historic structures; and

(d) Construction or financing of public facilities;

(13) Provisions to the effect that the applicant will be responsible for attorney's fees, costs, and expenses incurred by the City in the event an agreement is abandoned or breached by the applicant; and

(14) Provisions stating that an agreement is not intended to create third-party beneficiary status in the public or any other person not a party to the agreement.

(B) An agreement may:

(1) Contain other terms, provisions, requirements, and agreements concerning the property which may be agreed upon by the Mayor and Council and the applicant.

(2) Set the time frame and terms for development and construction on the property, which may include, but not be limited to, the phasing of the development and the timing of public improvements and public benefits being provided.

(3) Provide for other matters consistent with the Rockville City Code.

(C) Subject to the requirements of subsection (A), the Mayor and Council may negotiate the final terms of an agreement with the applicant.

Sec. 7.5-6. Referral to Planning Commission.

Upon receipt of a petition, the Mayor and Council must refer the petition to the Planning Commission for a determination on whether the proposed agreement is consistent with the Comprehensive Plan. The Mayor and Council may not enter into an agreement until the Planning Commission determines whether the proposed agreement is consistent with the Comprehensive Plan.

Sec. 7.5-7. Public Hearing; Approval of Agreement.

(A) Before an agreement may be executed, the Mayor and Council must conduct a public hearing on the proposed agreement. Notice of the hearing must be published in a newspaper of general circulation in the City once each week for 2 consecutive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.

(B) After the public hearing, the Mayor and Council may (i) enter into the proposed agreement as submitted; (ii) enter into the proposed agreement with amendments; or (iii) decline to enter into an agreement. If the Mayor and Council choose to enter into an agreement, the Mayor and Council must adopt a resolution that approves the agreement and authorizes the City Manager to execute the agreement on behalf of the Mayor and Council.

Sec. 7.5-8. Amendment of Agreement.

(A) Subject to paragraph (B) of this section and after a public hearing, the parties to an agreement may amend the agreement by mutual consent.

(B) The parties may not amend an agreement unless the Planning Commission determines whether the proposed amendment is consistent with the Comprehensive Plan.

Sec. 7.5-9. Termination of Agreement; Suspension.

(A) The parties to an agreement may terminate the agreement by mutual consent.

(B) If the Mayor and Council determines that suspension or termination of an agreement is essential to ensure the public health, safety, or welfare, the Mayor and Council may unilaterally suspend or terminate an agreement after a public hearing.

Sec. 7.5-10. Applicable Laws, Regulations, and Policies.

(A) Except as provided in paragraph (B) of this section, the local laws, rules, regulations, and policies governing the use, density, or intensity of the property subject to the agreement will be the local laws, rules, regulations, and policies in force at the time the City and the applicant execute the agreement.

(B) An agreement may not prevent compliance with the local laws, rules, regulations, and policies enacted after the date of the agreement if the City determines that compliance with such local laws, rules, regulations, and policies is essential to ensure the public health, safety, or welfare.

Sec. 7.5-11. Recording.

(A) An agreement not recorded in the Land Records of Montgomery County within 20 days after the day on which the parties execute the agreement is void. Either the applicant or the City may record the agreement.

(B) The City and the applicant, and their successors in interest, are bound to the agreement after the agreement is recorded.

Sec. 7.5-12. Enforcement.

Unless an agreement is suspended or terminated pursuant to Section 7.5-9, only the parties or their successors in interest may enforce the agreement. Neither this Chapter nor any agreement is intended to create third-party beneficiary status in the public or any other person not a party to an agreement.

Sec. 7.5-13. Duration of Agreements.

An agreement is void 5 years after the day on which the parties execute the agreement unless the agreement specifies a different duration or unless extended by an amendment under Section 7.5-8.

NOTE: Underling indicates material added
 Double Underling indicates material added after introduction
 ~~Strikethrough~~ indicates material deleted after introduction

I hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at its meeting of April 8, 2019.


Sara Taylor-Ferrell, City Clerk /Director of Council Operations

DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

THIS DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT (“Agreement”), made as of the _____ day of _____, 2019 (the “Effective Date”), by and between 1500 Rockville Pike LLC, Rockville Pike Holdings LLC, 1592 Rockville Pike LLC and Avissar-Diener, LLC (collectively, the “Developer”) and the Mayor and Council of Rockville, a municipal corporation of the State of Maryland (the “City”).

RECITALS

WHEREAS, Maryland law, as set forth in Land Use Article, Title 7, Subtitle 3 of the Maryland Annotated Code, grants the City the authority to establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements; and

WHEREAS, the City has adopted Chapter 7.5 of the Rockville City Code, the Development Rights and Responsibilities Agreements Chapter, which authorizes the City to enter into development rights and responsibilities agreements; and

WHEREAS, this Agreement is intended to constitute a Development Rights and Responsibilities Agreement as provided for in Chapter 7.5 of the City Code; and

WHEREAS, the Developer has a legal interest in certain real property located in the City of Rockville, Maryland, described in Exhibit “1”, attached hereto and made part hereof; and

WHEREAS, the names of all parties having an equitable or legal interest in the Property, including lien holders, are set forth in Exhibit “2” attached hereto and made a part hereof; and

WHEREAS, attached hereto and made a part hereof (Exhibit “3”) is certification by counsel to the Developer that the Developer has a legal interest in the Property; and

WHEREAS, on June 14, 2019, the Developer filed its application with the City to enter into this Agreement; and

WHEREAS, the Developer has paid to the City the filing fee authorized and established by the City’s schedule of various user and regulatory fees; and

WHEREAS, this Agreement was referred to the City’s Planning Commission (the “Planning Commission”) for a determination of whether this Agreement is consistent with the City’s 2002 Comprehensive Master Plan (the “Comprehensive Plan”) and the Rockville Pike Plan; and

WHEREAS, this determination was made by the Planning Commission at a public meeting held on _____, 2019; and

WHEREAS, on _____, 2019, following its receipt of the Planning Commission’s determination, the Mayor and Council held a duly advertised public hearing on this Agreement; and

WHEREAS, this Agreement is expressly intended to contractually bind the Developer and the City as to certain aspects of the development of the Property. This Agreement is intended to protect, preserve, and facilitate the full development of the Property pursuant to the terms of the development approvals, the Rockville Pike Plan, and this Agreement and to vest rights under the City Development Laws.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into and made a part of this Agreement, and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the City and the Developer hereby agree as follows:

ARTICLE I
DEFINITIONS

1. *Definitions.* The following words when used in this Agreement have the following meanings:

A. “APFO” means Article 20 of Chapter 25 of the City Code, generally known as the Adequate Public Facilities Ordinance, which is attached to this Agreement as Exhibit “4”.

B. “APFS” means the Adequate Public Facilities Standards as amended by the Mayor and Council on July 8, 2019, in Resolution No. 10-19, which is attached to this Agreement as Exhibit “5”.

C. “Agreement” means this Development Rights and Responsibilities Agreement.

D. “Block 1” means Block 1 of the Project, as set forth and illustrated on the Conceptual Phasing Exhibit of the Project Plan, which is attached to this Agreement as Exhibit “6”. Block 1 will be the constructed as the first phase of the Project, which may include sub-phases as determined at the time of filing each site plan.

E. “Block 2” means Block 2 of the Project, as set forth and illustrated on the Conceptual Phasing Exhibit of the Project Plan, which is attached to this Agreement as Exhibit “6”. Block 2 will be constructed concurrent with or after Block 1 and may include sub-phases, which will be determined at the time of each site plan.

F. “Central Park” means the park area identified as the “Central Park” on the Concept Landscape Illustrative Plan, which is attached to this Agreement as Exhibit “8”.

G. “Champion Project” means a development project that is approved by resolution of the Mayor and Council as a “Champion Project” upon a finding that the

Attachment 3.A.b: Draft DRRR For Twinbrook Quarter 7-31-19 (2783 : Twinbrook Quarter DRRR)

development project meets the following requirements set forth in Section 25.03.02 of the City Code: 1) the project is located within the South Pike; 2) the project contains at least five (5) acres of private property that is (i) contiguous, or (ii) confronting, separated only by a Business District Class I or Class II street; and 3) the development project significantly advances one or more of the following goals: (a) increases multifamily housing that provides more than the minimum requirement of moderately priced dwelling units near the Twinbrook Metro Station; and/or (b) provides more than the required public use space; and/or (c) provides more than the required vehicular, bicycle and/or pedestrian safety measures and/or provides pedestrian and bicycle access over or under the CSX/Metro tracks; and/or (d) provides a significant increase in the amount of employment.

H. “City Code” means the Rockville City Code, 1990 (as amended).

I. “City Development Laws” mean the laws, rules, regulations, and policies of the City governing the use, density, and intensity of the Property (intending to include all City regulations that reasonably relate to the ability of Developer to develop, construct, occupy and otherwise implement the Project as approved by the Project Plan), including, but not limited to, those governing development, subdivision, zoning, comprehensive planning, moderately priced dwelling units, forestry, water, sewer, stormwater management, environmental protection, land planning and design, adequate public facilities, and architecture, as further defined in Section 7.1B.

J. “Developer” means 1500 Rockville Pike LLC, Rockville Pike Holdings LLC, 1592 Rockville Pike LLC and Avissar-Diener, LLC, its respective successors and assigns in ownership of the Property.

K. “Project” means the development of the Property with up to 1,865 multi-family residential units, 431,440 square feet of office uses, 472,950 square feet of retail uses (composed of retail, restaurant, and grocery uses), and up to a 9,000 square-foot entertainment venue, or such amount and mix of uses that collectively generates “trips” within the “trip cap” established with the Project Plan and including one new north-south (the Chapman Avenue extension) and two new east-west connector streets (Festival Street and the Congressional Lane extension), a landscaped pedestrian promenade adjacent to Rockville Pike, underground and aboveground structured parking, public use spaces and open areas, and related amenities.

L. “Project Plan” means Resolution No. 7A-19 for approved Project Plan (PJT2018-00011) for the Property attached to this Agreement as Exhibit “7” and incorporated herein, which Project Plan was approved by the Mayor and Council on April 29, 2019, pursuant to Article 7 of Chapter 25 of the City Code.

M. “Property” means all of the real property described in Exhibit “1” attached hereto.

N. “Public Use and Open Space” means all open areas identified on the Concept Landscape Illustrative Plan attached to this Agreement as Exhibit “8”.

O. “Rockville Pike Plan” means the 2016 Rockville Pike Neighborhood Plan adopted by the Mayor and Council of Rockville on August 1, 2016, to update a portion of the

City’s 2002 Comprehensive Master Plan and replace the 1989 Rockville Pike Neighborhood Corridor Plan.

P. “Zoning Ordinance” means Chapter 25 of the City Code, which is attached to this Agreement as Exhibit “9”.

ARTICLE II
ZONING, DEVELOPMENT LIMITATIONS, AND PERMITS

2.1. *Zoning and Plan Designations.* The Property is zoned Mixed-Use Transit District Zone (“MXTD”).

2.2. *Development Limitations.*

A. *Background.* The Property is owned by the Developer. As an authorized designee of the Developer, Saul Holdings Limited Partnership submitted the Project Plan application to the City of Rockville on January 25, 2018. On April 29, 2019, by approved Resolution No. 7A-19, the Mayor and Council approved the Project Plan for the Project as a Champion Project, which permits the Developer to construct up to 1,865 multi-family residential units, 431,440 square feet of office uses, 472,950 square feet of retail uses (composed of retail, restaurant, and grocery uses), and up to a 9,000 square-foot entertainment venue, or such amount and mix of uses that collectively generates “trips” within the “trip cap” established with the Project Plan. A copy of Resolution No. 7A-19 is attached to this Agreement as Exhibit “7”. The Developer must seek all remaining development approvals required to allow the Project to be developed in accordance with the terms of the Project Plan, the City Code, and all other laws, rules and regulations necessary for the development, construction and occupancy of the Project.

B. The permissible uses on the Property for the Project are those permitted in the MXTD Zone as set forth in Article 13 of the Zoning Ordinance. The approved uses for the Project are set forth in the Project Plan (Exhibit “7”).

C. Subject to the “trip cap” identified in Condition 23 of the Project Plan, the total density of development on the Property must not exceed, collectively, 1,865 multi-family residential units, 431,440 square feet of office uses, 472,950 square feet of retail uses (composed of retail, restaurant, and grocery uses), and up to a 9,000 square-foot entertainment venue.

D. The phasing for construction of the Project will begin with development of Block 1 as the first phase, and Block 2 as the second phase. There may be sub-phases for the construction of Blocks 1 and 2. The timing for construction of all other Blocks that are set forth and illustrated on the Conceptual Phasing Exhibit, which is attached to this Agreement as Exhibit “6,” is undefined and may occur in any sequence over the span of the validity period of the Project Plan and this Agreement. Specific improvements required for each subphase of each Block will be determined at the time of each site plan approval and thereafter will be part of the Project intended to be the subject of this Agreement.

E. In accordance with Section 25.13.05(c)(6)(b) of the Zoning Ordinance, the Mayor and Council approved the Project Plan, as a Champion Project, to include retail

Attachment 3.A.b: Draft DRRRA For Twinbrook Quarter 7-31-19 (2783 : Twinbrook Quarter DRRRA)

commercial uses by a single tenant occupying more than sixty-five thousand (65,000) square feet of floor area at the ground level of Building “1” of Block 1. Any site plan that proposes a single tenant occupying more than sixty-five thousand (65,000) square feet of floor area at the ground level of Building “1” of Block 1 will be permitted subject to all other requirements for site plan approval.

F. In accordance with Section 10.5-22(d)(4) of the City Code, the Mayor and Council approved the Project Plan, as a Champion Project, with a minimum tree cover of five (5) percent of the Project’s tract area. Future site plans will be reviewed and processed by the City in accordance with a minimum required tree cover of five (5) percent, as reflected in Section 10.5-22(d)(4) of the City Code as of the Effective Date of this Agreement.

G. In accordance with Section 25.16.03.h.1 of the Zoning Ordinance, the Mayor and Council, as part of the Project Plan, granted a reduction in the required number of parking spaces for the Project to permit 43% fewer parking spaces than would otherwise be required for the Project pursuant to the Zoning Ordinance. Future site plans will be reviewed and processed by the City in accordance with the approved parking reduction of 43%, as reflected in the Project Plan.

H. The Property will be developed in accordance with, and subject to the conditions and requirements of development approvals that are required pursuant to the City Code and all other applicable laws, rules and regulations including:

1. Final building heights which will be established at the time of site plan approval for each phase and/or block of the Project within the range of minimum and maximum building heights specified in the Project Plan; and

2. Final building sizes, setbacks, and other development standards will be established at the time of site plan approval for each phase and/or block of the Project consistent with the Project Plan.

2.3. *Other Development Approvals and Permits.* The City and the Developer agree that the permits, approvals, and agreements required by the City and already approved for the Project at the time of the execution of this Agreement are:

1. Project Plan approved by the Mayor and Council by Resolution No. 7A-19 on April 29, 2019 and attached hereto as Exhibit “7”.
2. Preliminary Forest Conservation Plan [FTP2017-00011](#) approved by the City on April 24, 2019, and clarified by staff on June 14, 2019 and attached within as Exhibit “10”.

The Project will be required to comply with all other applicable requirements of the City Code for land development not set forth herein including, but not limited to site plans, subdivision plats, and plans and permits, such as water, sanitary sewer, storm drainage, paving, and sediment and erosion control improvements, stormwater management, building permits, and occupancy

permits. The Developer will also be required to obtain all applicable County, State, federal, or other governmental approvals and permits.

2.4 *Moderately Priced Dwelling Units.* The Project will provide 15% of the total residential units constructed as Moderately Priced Dwelling Units (“MPDU”) in accordance with Chapter 13.5 of the City Code (“MPDU Ordinance”) and the associated Moderately Priced Housing Regulations as of the Effective Date of this Agreement. A copy of the MPDU Ordinance and Moderately Priced Housing Regulations is attached to this Agreement as Exhibit “11”.

2.5 *Champion Project.* As reflected in Exhibit “7” attached to this Agreement and in accordance with Section 7.5-5(A)(11) of the City Code, the Mayor and Council of Rockville, by Resolution No. 7A-19, found that the Project Plan meets the Champion Project criteria by: A) providing more than the required public use space; B) providing more than the required vehicular, bicycle, and pedestrian safety measures; and C) providing a significant increase in the amount of employment.

ARTICLE III **COMMUNITY FACILITY AND INFRASTRUCTURE IMPROVEMENTS**

3.1 *Road Improvements.* The Developer is required to implement certain road improvements as set forth in the Project Plan.

3.2. *Sewer Improvements.*

A. The Developer is required to comply with the Water and Sewer Authorization letter dated February 4, 2019 (“WSA”), including the requirement to mitigate sewer deficiencies by constructing certain sewer improvements as identified in the WSA. The WSA is attached hereto as Exhibit “13.” Upon completion of off-site sewer improvements, the Developer will be eligible for credits against any applicable sewer contribution capital charges in accordance with Chapter 24 of the City Code.

B. *Sewer Capacity Deficiency C.* The City and the Developer will enter into a separate agreement that specifies an implementation schedule and dictate the responsibility for funding and constructing a project to mitigate Sewer Capacity Deficiency C (the “Implementation Agreement”). The Implementation Agreement will address, among other things, the total project cost, which includes the survey, design, construction, construction inspection, construction fees, and necessary easements (“Total Project Costs”). The parties agree that the Implementation Agreement will be executed prior to the Planning Commission’s approval of the first site plan. The following terms are applicable to the implementation of the mitigating measures related to Sewer Capacity Deficiency C:

1. If the Developer implements the mitigation measures related to Sewer Capacity Deficiency C, the Developer will be eligible for sewer capital contribution credit in accordance with Chapter 24 of the City Code in an amount equal to the Total Project Cost and the sewer capacity will be reserved for the remainder of the validity period of the Project Plan.

2. If the City has implemented the mitigation measures related to Sewer Capacity Deficiency C prior to April 29, 2029, the Developer must reimburse the City for the Total Project Cost, less any monetary contributions that the City has collected from other property owners or developers for the express purpose of funding the implementation of the mitigation measures related to Sewer Capacity Deficiency C, by May 31, 2029.

3. If the mitigation measures related to Sewer Capacity Deficiency C has not been implemented prior to April 29, 2029, the Developer must, by May 31, 2029, (i) post a surety in an amount equal to the Total Project Cost, less any monetary contributions that the City has collected from other property owners or developers for the express purpose of funding the implementation of the mitigation measures related to Sewer Capacity Deficiency C, and implement the mitigation measures related to Sewer Capacity Deficiency C; (ii) pay the City an amount equal to the Total Project Cost, less any monetary contributions that the City has collected from other property owners or developers for the express purpose of funding the implementation of the mitigation measures related to Sewer Capacity Deficiency C; or (iii) forfeit any reserved capacity.

a. If the Developer satisfies (i) or (ii), then the sewer capacity will be reserved for the remainder of the validity period of the Project Plan.

b. If the Developer fails to satisfy (i) or (ii), then the Developer forfeits all reserved sewer capacity. If capacity is forfeited, the Developer must submit a new water and sewer authorization application and receive reauthorization to connect to and utilize the City’s existing sewer system. The Developer will be subject to any City Development Laws related to water and sewer service that are in effect at the time the Developer applies for reauthorization.

3.3 *Water Improvements.* The Developer is required to comply with the conditions set forth in the WSA.

3.4. *Schools.* At the time of Project Plan approval, the Mayor and Council determined that the Project Plan is exempt from the school capacity requirements test pursuant to Section I.C.B of the APFS. To the extent that the Developer proposes no greater than 1,865 multi-family residential units through full build out of the Project, any future site plan application will be reviewed and processed by the City in accordance with this exemption from the school capacity requirements test. If the Project Plan is amended to increase the number of multi-family units to an amount greater than 1,865, then the adequate public facility standards in effect at the time of the amendment to the Project Plan will apply to any increase in the number of multi-family units.

3.5 *Public Use and Open Space.*

A. Central Park. The Developer must construct the Central Park in a manner consistent with the Concept Landscape Illustrative Plan prior to final occupancy of the Block 2 improvements as identified on the Conceptual Phasing Exhibit, which is attached to this Agreement as Exhibit “6”.

B. Other Public Use and Open Space. The Developer must construct the linear park, courtyard parks, and other Public Use and Open Space improvements in a manner consistent with the Concept Landscape Illustrative Plan, which is attached to this Agreement as Exhibit “8”.

ARTICLE IV **TERM OF THE AGREEMENT**

The City acknowledges and understands the need for the Developer to have greater certainty and stability to fully develop the Property in accordance with this Agreement and the Project Plan, and to provide the regulatory certainty necessary to secure financing for a development project of this size and duration that includes large-scale investment in public infrastructure, the parties have agreed that this Agreement will remain valid and in full force and effect until April 29, 2049 unless extended by an amendment complying with all procedures required in this Agreement, the City Code, and the State Law. The parties acknowledge and agree that the term of this Agreement is justified by the: (1) economic investment made by the Developer for the development of the Project; (2) investment in, and construction of, public and private infrastructure by the parties; (3) public purposes to be advanced by development of the Project in accordance with the Development Laws; (4) uncertainty of future market demands and political pressures; and (5) expectations of the parties.

ARTICLE V **DEVELOPMENT REVIEW**

The City agrees to use reasonable efforts to review and process all remaining development applications and all ensuing permits required to develop, construct and occupy the Project consistent with the Project Plan in good faith, consistent with the City’s development review process, the Project Plan and this Agreement.

ARTICLE VI **SURVIVAL AND TRANSFER OF OBLIGATION**

6.1. *Binding Upon Successors and Assigns of Developer.* The Developer agrees that this Agreement will be binding upon it, its successors and assigns, and upon any and all successor owners of record of all or any portion of the Property. To assure that all such successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, the Developer agrees that it will incorporate, by reference, this Agreement into any and all real estate sales contracts entered into after the Effective Date of this Agreement for the sale of all or any portion of the Property.

6.2 *Binding Upon Successors and Assigns of the City.* The City agrees that all obligations assumed by it under this Agreement will be binding on it, its agencies, governmental units, and its respective successors and assigns.

6.3 *Recordation.* Developer agrees that it will, at its sole expense, have this Agreement recorded among the Land Records of Montgomery County within twenty (20) days after the day on which the parties execute the Agreement, otherwise the Agreement is void. The

City agrees that upon the City’s authorized execution of this Agreement, it will immediately make the fully executed Agreement available to the Developer for recordation in the Land Records of Montgomery County.

ARTICLE VII
EFFECT OF DEVELOPMENT REGULATIONS

7.1 *Effect of Agreement.*

A. Subject to the provisions of Section 7.1.B below, the Developer must comply with all City, county, federal, State and local laws. Developer agrees that it will comply with changes to the City Code that are enacted to implement changes to State or federal laws.

B. Except as provided in Sections 7.1.C of this Agreement, the City Development Laws governing the use, density or intensity of the Property subject to this Agreement are the City Development Laws in force at the time the parties execute this Agreement. For the purposes of this Agreement, the City Development Laws include, but are not limited to, the following: (i) the Zoning Ordinance (Chapter 25 of the City Code); (ii) APFO (Article 20 of Chapter 25 of the City Code); (iii) APFS (Resolution No. 10-19); (iv) the Comprehensive Transportation Review (attached hereto as Exhibit “14”); (v) MPDU Ordinance (Chapter 13.5 of the City Code); (vi) the Moderately Priced Housing Regulations; (vii) Sediment Control and Stormwater Management (Chapter 19 of the City Code); (viii) Signs (Article 18 of Chapter 25 of the City Code and Chapter 19.5 of the City Code); (ix) Streets and Public Improvements (Chapter 21 of the Code); (x) Water Quality and Protection (Chapter 23.5 of the City Code); (xi) Water, Sewers and Sewage Disposal (Chapter 24 of the City Code); (xii) Plats and Subdivision Regulations (Article 21 of Chapter 25 of the City Code); (xiii) Forest and Tree Preservation Ordinance (Chapter 10.5 of the City Code); and (xiv) such other City regulations that reasonably relate to the ability of Developer to develop, construct, occupy and otherwise implement the Project as approved by the Project Plan. Notwithstanding the foregoing, the parties agree that compliance with the provisions of Chapter 5 of the City Code (Buildings and Building Regulations) is essential to ensure the public health, safety, and welfare and subsequently enacted or adopted provisions of Chapter 5 will apply to the Project.

C. If the City determines that compliance with City Development Laws enacted or adopted after the Effective Date of this Agreement is essential to ensure the public health, safety or welfare, the City may impose the subsequently enacted or adopted City Development Laws and the effect thereof upon the Property.

7.2 *Application of City Development Laws Enacted After the Effective Date.*

A. Mutual Consent. If the parties agree that compliance with City Development Laws enacted or adopted after the Effective Date of this Agreement will better facilitate the full development of the Project, the parties may agree by written consent to the application of the applicable law, rule, regulation and/or policy to the Project. The City’s written consent to apply any City Development Laws enacted or adopted after the Effective Date of this Agreement to the Project may be executed by the Director of Planning and Development Services.

B. Major Amendments to the Project Plan. If the Developer submits a Project Plan amendment to the City that seeks to exceed the total density of development identified in Section 2.1.C of this Agreement or the “trip cap” approved by the Project Plan, the Project will be required to comply with the City Development Laws in effect at the time of the amendment.. Amendments to the Project Plan that do not require Mayor and Council approval will be subject to compliance with the City Development Laws as of the Effective Date of this Agreement.

7.3 *Approvals Required.* Developer must obtain all approvals necessary under any provision of local, state or federal law before proceeding. Notwithstanding anything to the contrary contained herein, this Agreement does not control or affect laws, regulations or approvals which are not within the control of the City. This Agreement does not address any approvals required by Montgomery County, State or federal law and Developer shall be responsible for obtaining any approvals required by Montgomery County or by State or federal law.

7.4 *Fees.* The Developer must pay all fees and taxes required by the City at the rate in effect at the time the fee or tax is due. To the extent that the Developer constructs a total amount of development that is less than the maximum amount of development approved by the Project Plan or otherwise within the “trip cap” established by Condition 23 of the Project Plan, the Developer will pay the City’s Transportation Improvement Fee in accordance with Condition 29 of the Project Plan.

7.5 *Vesting and Developer’s Reliance.* The City acknowledges that the Developer will be making the long term financial commitments necessary to substantially build out the Project in accordance with the approved Project Plan and that the City of Rockville’s approval of this Agreement is important to allow the Project to be governed by and subject to the City Development Laws in effect as of the Effective Date of this Agreement. It is further acknowledged and agreed that this Agreement is intended to provide “vesting” of the Project under the City Development Laws in effect as of the Effective Date of this Agreement. The Developer agrees that it will be required to obtain all approvals necessary for development of the Project in accordance with the approved Project Plan, City Development Laws and City Code.

7.6 *Moratorium.* In the event that a “moratorium” (as hereinafter defined) is declared or imposed, and the moratorium will impact active development or impending entitlements for any part of the Project, as reasonably determined by the City, this Agreement will be extended for one (1) additional day for each day during which such moratorium exists, and the Project will not be subjected to any additional regulation, legislation, limitation, phasing, or contributions as a result of the moratorium. Further, in the event that a moratorium is declared or imposed, and the moratorium will impact active development or impending entitlements for any part of the Project, as reasonably determined by the City, then any deadline concerning the Developer’s obligation to construct, install, fund or post financial guarantees for the infrastructure improvements required pursuant to this Agreement will be extended for one (1) additional day for each day during which such moratorium exists, and the Project will not be subjected to any additional regulation, legislation, limitation, phasing, or contributions as a result of the moratorium. The term “moratorium” means the lawful implementation or declaration by the

United States Government, State of Maryland, Montgomery County, City of Rockville and/or any agency, department, division and/or branch thereof for purposes of a limitation, prohibition, restriction and/or phasing of the review, recording, development and/or construction of the Project as otherwise desired and intended by Developer, or a de facto moratorium imposed by any applicable governmental authority which has the effect of denying the Developer the ability to record lots or obtain permits for the Project pursuant to any development approval pursued by Developer consistent with this Agreement and the Project Plan.

ARTICLE VIII **GENERAL PROVISIONS**

8.1 *Notices.* All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices and communications to the Developer shall be addressed to, and delivered at, the following address:

1500 Rockville Pike LLC, Rockville Pike Holdings LLC,
1592 Rockville Pike LLC, and Avissar-Diener, LLC
c/o Saul Holdings Limited Partnership
Attention: President and General Counsel
7501 Wisconsin Avenue, Suite 1500E
Bethesda, Maryland 20814
Telephone: (301) 986-6200

With a copy to:

C. Robert Dalrymple
Linowes and Blocher LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, Maryland 20814
Telephone: (301) 961-5208

Notices and communications to the City shall be addressed to, and delivered at, the following address:

Mayor and Council of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850
Telephone: (240) 314-8280

With a copy to:

City Attorney's Office
 Rockville City Hall
 111 Maryland Avenue
 Rockville, Maryland 20850
 Telephone: (240) 314-8150

By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

8.2 *Authority to Execute.* The City hereby warrants and represents to the Developer that the person executing this Agreement on its behalf has been properly authorized to do so. The Developer hereby warrants and represents to the City (1) that it is the fee simple, record owner of the Property, (2) that it has the right, power and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the Property as set forth herein, (3) that all legal actions needed to authorize the execution, delivery and performance of this Agreement have been taken; and (4) that the person executing this Agreement on its behalf has been properly authorized to do so.

8.3 *Governing Law.* This Agreement is governed by and must be construed in accordance with the laws of the State of Maryland.

8.4 *Jurisdiction and Venue.* Exclusive jurisdiction and venue for any proceedings brought with respect to this Agreement must be in the Circuit Court for Montgomery County, Maryland. Developer and City do hereby waive trial by jury in connection with any proceedings brought to enforce the terms of this Agreement.

8.5 *Amendments.* The parties to this Agreement may amend the Agreement by mutual consent after (i) the Planning Commission determines whether the proposed amendment is consistent with the Comprehensive Plan and (ii) the Mayor and Council holds a public hearing. All amendments to this Agreement shall be in writing and shall be executed by the City and the Developer and be recorded in the Land Records of Montgomery County within twenty (20) days of execution of the amendment.

8.6 *Recordation.* Unless this Agreement is recorded in the Land Records of Montgomery County within twenty (20) days after the date on which the City and the Developer executed the Agreement, the Agreement shall be void.

8.7 *Attorneys' Fees.* The Developer will be responsible for attorney's fees, costs, and expenses incurred by the City in the event this Agreement is abandoned or breached by the Developer.

8.8 *No Third Party Beneficiary Status.* This Agreement is not intended to create third-part beneficiary status in the public or any other person not a party to this Agreement.

8.9 *Lienholders.* All persons with a lien interest in the Property, if any, have executed this Agreement, and those lienholders with a power of sale, if any, have subordinated such liens to the position of the City under this Agreement.

8.10 *Termination or Suspension.* This Agreement may be terminated by mutual consent of the City and Developer. After a public hearing, the Mayor and Council may suspend or terminate this Agreement if it is determined to be essential to ensure the public health, safety, or welfare.

8.11 *Severability.* Except in the case of a material provision of this Agreement, in case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of the Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement. If a material provision contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, the parties may terminate this Agreement pursuant to Section 8.10 above or mutually agree to continue to construe this Agreement as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

8.11 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written.

WITNESS:

The Mayor and Council of Rockville, a municipal corporation of the State of Maryland

BY: _____
Rob DiSpirito, City Manager

STATE OF MARYLAND *
 * to wit:
CITY OF ROCKVILLE *

I HEREBY CERTIFY that on the ____ day of _____, 2019, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared Rob DiSpirito, who acknowledged himself to be the City Manager of the Mayor and Council of Rockville, Maryland, a municipal corporation of the State of Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same as authorized by Mayor and Council Resolution No.____ for the purpose therein contained to be his act on behalf of said entity.

WITNESS my hand and notarial seal the year and day first above written.

NOTARY PUBLIC
Printed Name _____

My Commission Expires:

[Additional Signature Pages Follow]

Attachment 3.A.b: Draft DRRRA For Twinbrook Quarter 7-31-19 (2783 : Twinbrook Quarter DRRRA)

WITNESS:

1500 Rockville Pike LLC

By: _____

Name: _____

Title: _____

Date: _____

STATE OF MARYLAND

*

to wit:

COUNTY OF MONTGOMERY

*

I HEREBY CERTIFY that on this ___ day of _____, 2019, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of 1500 Rockville Pike LLC and that such person, in such capacity and being authorized so to do, executed the foregoing Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

Attachment 3.A.b: Draft DRRR For Twinbrook Quarter 7-31-19 (2783 : Twinbrook Quarter DRRR)

[Additional Signature Pages Follow]

WITNESS:

Rockville Pike Holdings LLC

By: _____
Name: _____
Title: _____
Date: _____

STATE OF MARYLAND

*
* to wit:
*

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this ____ day of _____, 2019, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of Rockville Pike Holdings LLC and that such person, in such capacity and being authorized so to do, executed the foregoing Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

[Additional Signature Pages Follow]

WITNESS:

1592 Rockville Pike LLC

By: _____

Name: _____

Title: _____

Date: _____

STATE OF MARYLAND

*

to wit:

COUNTY OF MONTGOMERY

*

*

I HEREBY CERTIFY that on this ___ day of _____, 2019, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of 1592 Rockville Pike LLC and that such person, in such capacity and being authorized so to do, executed the foregoing Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

Attachment 3.A.b: Draft DRRR For Twinbrook Quarter 7-31-19 (2783 : Twinbrook Quarter DRRR)

[Additional Signature Page Follows]

WITNESS:

Avissar-Diener, LLC

By: _____

Name: _____

Title: _____

Date: _____

STATE OF MARYLAND

*

to wit:

COUNTY OF MONTGOMERY

*

I HEREBY CERTIFY that on this ____ day of _____, 2019, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of Avissar-Diener, LLC, and that such person, in such capacity and being authorized so to do, executed the foregoing Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

Attachment 3.A.b: Draft DRRR For Twinbrook Quarter 7-31-19 (2783 : Twinbrook Quarter DRRR)



Agenda Item #:	A
Meeting Date:	August 7, 2019
Responsible Staff:	Barry Gore

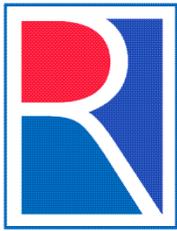
SUBJECT:

Work Session 4: Comprehensive Plan, Draft for Planning Commission Public Hearing

RECOMMENDATION

(Include change in law or Policy if appropriate in this section):

Hold the fourth work session on the Draft Comprehensive Plan; complete review of the Land Use Element.



City of
Rockville
Get Into It

Planning Commission Staff Report:

MEETING DATE: August 7, 2019

REPORT DATE: July 31, 2019

RESPONSIBLE STAFF: Barry Gore, Principal Planner,
Comprehensive Planning,
240.314.8214

bgore@rockvillemd.gov

SUBJECT: Land Use Element (continued
discussion)

DISCUSSION:

The Planning Commission began discussion of the Land Use Element at the July 24 meeting and instructed staff to make some changes to the draft. The Planning Commission ended the discussion just before the section heading *Testimony on the Relationship Between the Land Use Policy Map and the Zoning Map* on page 145 of the July 24 briefing packet. That staff report is attached.

Staff recommends that the Planning Commission continue the discussion on the Land Use Element at the August 7 meeting. On packet page 151 (July 24 staff report), staff had included a

response to testimony on Public Park designation on the Land Use Policy map that recommended that the Planning Commission receive legal advice from the City Attorney's Office in a closed session. That closed session was held immediately prior to the work session on July 24. Based on legal advice provided, staff recommends that the definition of Public Parks be amended (as underlined below) in the Draft Plan on page 19, if the Planning Commission wishes to retain the "Public Park" designations on the Land Use Policy Map.

P: Public Parks includes Rockville's public parks, recreation centers, and golf course. Preferred future park locations are also indicated with a 'P'. An asterisk is placed on the map in the general area where a public park is needed but the location is yet to be determined. A land use designation of public park on private property or property not otherwise owned by the City is for planning purposes. Any such property will not be zoned as "Park" and nothing in this plan precludes an owner from developing property in accordance with the underlying zoning designation and zoning regulations applicable to the property.

NEXT STEPS:

The next session on the Draft Comprehensive Plan is scheduled for September 11. The Environment and Water Resources Elements are scheduled for Planning Commission review and discussion.

Attachments

Attachment 4.A.a: July 24 Staff Report (PDF)



City of
Rockville
 Get Into It

Planning Commission Staff Report:

MEETING DATE: July 24, 2019

REPORT DATE: July 17, 2019

RESPONSIBLE STAFF: Barry Gore, Principal Planner, Long Range Planning 240.314.8214
 bgore@rockvillemd.gov

SUBJECT: Work Session on the Land Use Element of the Draft Comprehensive Plan

BACKGROUND:

Actions to Date

Following completion of public hearings on the Comprehensive Plan Draft, the Planning Commission scheduled four work sessions, to take place on June 26, July 10, July 24, and August 7. The work sessions are opportunities for the Planning Commission to review the testimony with staff and make revisions to the Draft Plan.

The Planning Commission closed the public record for written testimony on Tuesday, June 18, 2019. Written testimony received by the Planning Commission and transcripts from the public hearings are available on the project Web site at <https://www.rockvillemd.gov/203/Rockville-2040-Comprehensive-Plan-Update>. All of the testimony and the transcripts were also provided in the staff report for the June 26 work session on the Comprehensive Plan. A summary of all testimony is attached with this staff report.

The first work session covered the Introduction and the Community Facilities, Economic Development, and Municipal Growth elements. The second work session covered Housing, Historic Preservation, and Recreation and Parks. At both sessions, the Planning Commission reviewed testimony submitted and instructed staff to make changes to the Draft Plan based on the discussions.

Summary of Draft Plan Contents

The Comprehensive Plan: Draft for Planning Commission Public Hearing constitutes the first major portion of the proposed update to the existing Comprehensive Master Plan, which was adopted by the Mayor and Council of Rockville on November 12, 2002.

This first portion of the Draft Plan contains an Introduction chapter and ten elements, or citywide topic areas. The second portion of the plan has not yet been completed or released. It will cover the planning areas, which are closer looks at geographic subareas of the city. The draft of the planning areas portion will be presented to the Planning Commission this fall, for its review, adjustments, and release.

DISCUSSION:

Staff suggests that, at the July 24 meeting, the Planning Commission review and discuss testimony on the Land Use element. As this is a very broad topic area, staff recommends that the Planning Commission discuss the testimony as sets of land use issues with testimony on the same or similar topic grouped together, as outlined below. Some testimony addresses issues that are singular and not grouped with other issues; these are discussed after the broad sets of issues. Background information is provided on complex issue sets; others begin with testimony organized by exhibit number.

The staff report makes references to both the current Comprehensive Master Plan (CMP - 2002) and its "Planned Land Use" map; and the Draft Comprehensive Plan (March 2019) and its draft "Land Use Policy Map," which is shown in the plan as Figure 3 on page 20. The current Planned Land Use Map is available at: <https://www.rockvillemd.gov/DocumentCenter/View/27988/Comprehensive-Master-Plan---Planned-Land-Use-Map-Updated-2017?bidId=>. In some cases, it is helpful to consider the differences between these two land use maps when reviewing the testimony. Staff notes that the current 2002 plan does not include definitions for the dozens of land use categories used on the land use map. The Draft Plan includes definitions, which are useful to understanding city land use policy. To ensure ease of use for the commissioners, staff has included in your mailed packets large printed versions of both the existing and draft new land use maps.

Testimony on Accessory Dwelling Units (ADUs)

Exhibit 11 from the Maryland Department of Planning (MDP) comments that the draft plan's recommendation for allowing one ADU per residential lot is "a truly noteworthy policy and the

city is to be commended,” specifically as a strategy for providing affordable housing.

Exhibit 16 is from a resident of Twinbrook who is in favor of changing residential zoning from exclusively single-unit housing to include duplex housing, which seems to address the ADU policy in the draft plan. However, the resident also expresses concerns about there being adequate parking if such a change is made.

Staff recommendation: Retain draft text language on ADUs on page 23. Staff recognizes that zoning standards and regulations, including parking, will need to be developed and adopted prior to implementation.

Testimony on Residential Attached (RA), definitions and mapping

Several items of testimony address the Residential Attached (RA) land use category, including its definition on page 19 of the Draft Plan, the types of housing included, and locations where it is mapped on the Land Use Policy Map.

A category called Attached Residential is found on the current (2002) Planned Land Use Map, based primarily on the 2002 Comprehensive Master Plan. The 2002 CMP does not include a definition of Attached Residential, and that category of land use seems to be mapped where townhouses already existed. However, the current map also applies Attached Residential on fourplex buildings and one nine-unit apartment building along Dawson Avenue in the West End (zoned RMD-25), and on duplex buildings on Blandford Street and Lynfield Drive (zoned R-40). Staff recommends a similar approach for the new Residential Attached category, in that the land use category spans a variety of construction types, while existing or future zoning controls the actual density and development standards.

The draft text definition of Residential Attached (Land Use element, page 19) reads:

“RA: Residential Attached allows a variety of house types that share party walls. Types of permitted construction include rowhouse, fourplex or quad, triplex, and duplex.”

However, the text on page 24 under Policy 3 in the Land Use element describes the RA types also to include “small apartment buildings,” and page 191 in the Housing element includes “small apartment buildings” in a related discussion. As such, the draft Plan has an inconsistency.

Exhibit 9 from the Twinbrook Community Association requests that the definition of RA explicitly state that the category is inclusive of detached single unit residential as well as attached.

Staff recommendation: Change the definition of Residential Attached to be inclusive of detached residential.

Exhibits 29, 34, and 35, from two residents of East Rockville and the East Rockville Civic Association, ask for a more detailed definition of the RA category, specifically requesting that RA not include “small apartment buildings.”

Staff recommendation: Revise the definition of Residential Attached to read “small apartment buildings with up to six units total in a single structure.” This added language will place an upper limit on the sizes of these properties. The East Rockville planning area discussion will include zoning recommendations for individual parcels, depending on their locations in the city, where there will be an opportunity to refine and limit the types and number of units per site based on location and context. Residential Attached can therefore remain a broadly defined land use type in the Comprehensive Plan, with the zoning as the implementing tool for more-localized customization.

Exhibit 42 requests a land use change for 216 Park Road, from the draft map showing Residential Attached to Residential Flexible. The issue raised by the property owner is, as above, the definition of Residential Attached, specifically whether it includes ‘stacked flats’ or ‘two-over-twos.’

Staff response: No change to the draft map is recommended. Staff notes that a duplex, triplex, or fourplex structures can be configured as vertically stacked flats. Likewise, two-over-twos are a type of vertically stacked townhouse. Any of these types may be consistent with the Residential Attached category, depending on the total number of units on the lot. The zoning applied to these RA properties will control the density and dimensions of any construction.

Exhibits 29, 34, and 35, from two residents of East Rockville and ERCA, ask that RA be mapped for only “two or three lots from South Stonestreet but no further” on the three blocks across from the Rockville Metro Station, those being Reading Terrace, Highland Avenue, Croydon Avenue.

Exhibit 19, from a resident of Town Center, asks that the RA mapping be preserved in the plan, and urges the Commission to expand the area for RA types of housing, including small apartments, an additional quarter mile out from its current mapping in order to generate affordable housing.

Exhibit 40, from WMATA, notes Metro’s recent investments in additional peak service to Rockville’s Metro stations with the elimination of the Grosvenor turnback. Metro supports the policies on ADUs, and Residential Attached, mentioning the typical half-mile station walkshed.

Exhibit 11, from the Maryland Department of Planning, supports the Draft Plan policies on RA and states that MDP would like to share actions 3.1 and 3.2 with other communities as best practices; these items addressing the mapping of Residential Attached and the drafting of a new mixed residential zoning regulation.

Staff recommendation: Retain Residential Attached (RA) as mapped on the draft Land Use Policy Map, with one change to remove RA from East Jefferson Street between Mount Vernon Place and Ritchie Parkway and retain Residential Detached in that location. The RA designation on East Jefferson was a prior mapping error. Staff is sensitive to the concerns of the East Rockville community and looks to both the planning area discussion and zoning to provide a customized approach that will take into account both transit proximity and customization according to the property-by-property circumstances to avoid adverse impacts on neighbors.

Testimony on Residential Flexible and Retail Residential Mix

Several pieces of testimony include questions about the definition of the Residential Flexible (RF) land use category. The draft definition on page 19 reads:

“RF: Residential Flexible allows a mix of rowhouse and apartment buildings, as well as detached houses. It is applied to relatively large sites where the final mix of residential construction is flexible and to be determined during development review.”

Staff recommendation: After reviewing where the RF sites are mapped, staff recommends changing the definition to read: “Residential Flexible is applied to sites where the mix of allowed residential types is flexible, as regulated by the Zoning Ordinance, and to be finalized during development review. Small scale retail is an allowed option if integrated into the residential development.”

Exhibit 24, from Tower-Dawson, LLC supports the mapping of RF on a portion of the Tower Oaks area that the PD-TO approved for an extended stay hotel.

Staff response: Staff agrees. No changes are needed.

Exhibit 22, regarding the property at 5946 Halpine Road, requests a change from RF to Retail Residential Mix (RRM). The owner believes that a small amount of retail on the property would be appropriate in this pathway to the Twinbrook Metro Station.

Staff recommendation: Retain Residential Flexible at 5946 Halpine Road, with the understanding that the proposed revised definition of Residential Flexible allows for small scale retail integrated into a residential development. The Twinbrook Planning Area discussion also will reflect the Planning Commission’s recommended land use category, noting the change from the current Park use and will include a zoning recommendation for this property.

Exhibit 18, from Woodmont Country Club, requests that the Land Use Policy Plan map add a band of Residential Flexible (RF) along the frontage of their property along Wootton Parkway.

Staff response: The Initial Staff Draft included this “band” of RF in the location requested. During a review session, the Planning Commission directed staff to remove the RF designation and leave the entire Woodmont Country Club property (except for that portion addressed in

the Rockville Pike Neighborhood Plan) as Open Space Private (OSP). Staff can support this approach, but in parallel with how a change of use may occur for all or part of the property. This discussion is presented, below, as part of testimony related to Policy 25, and will also be presented in the planning areas section of the plan.

Testimony on the plan for the Veirs Mill Road corridor, Twinbrook Metro Station area and mapping of Residential Attached, Residential Flexible, and Retail Residential Mix.

Exhibit 17 is testimony submitted by a Twinbrook resident. A request has been made that the Planning Commission reconsider the draft plan's recommendation for mixed use development along Veirs Mill Road at the intersections of Edmonston, Broadwood, and Atlantic. The resident requests that the neighborhood be left alone, mentioning the difficulty in moving around the area during peak times.

Exhibit 26 is testimony from the Twinbrook Community Association (TCA) which begins with a statement of support: "We applaud the inclusion of the Twinbrook Metro Station area and the Veirs Mill Corridor in the Land Use Policy map, to ensure that Twinbrook residents have access to the flexible zoning arrangements that allow for growth and housing options."

Exhibit 45 is testimony from a Twinbrook resident with an address a few blocks south of Veirs Mill Road. The testimony supports the draft plan recommendation for additional density near Metro stations and along the MD 355 and Veirs Mill Road transit corridors. The resident asks for more walkable amenities in their immediate area and supports the development of a community node at Edmonston Drive and Veirs Mill Road. The question is asked: "Could larger apartment buildings be accommodated here to leverage the transit links and help support neighborhood-based retail?"

Staff recommendation: Retain the RA, RF, RRM and RM land uses along Veirs Mill Road on the Land Use Policy Map as drawn in the draft plan.

Discussion of Institutional Uses

There was no testimony on the draft plan's approach to mapping private Institutional uses. However, during review of the Initial Staff Draft, the Planning Commission did indicate a need for a final discussion and decision regarding mapping of these uses. The draft plan shows Institutional uses only on parcels larger than three acres. For parcels smaller than three acres, the plan map identifies a land use to match the underlying zoning (typically Residential Detached in R-60 or R-90 zones) in most cases. In a small number of instances, a land use such as RF or ORRM is applied to an institutional use, implying recommendation for higher density and, where deemed appropriate, new a zoning designation.

During its review of the Initial Staff Draft, the Planning Commission discussed the application of Residential Flexible to the property at 5906 Halpine Road, which is currently a church on 1.5 acres. The current Planned Land Use map shows the property as "Institutional" and it is zoned

R-60. The Planning Commission's discussion questioned the Residential Flexible, over the more restrictive Residential Attached, which raised the issue of how private institutional uses are mapped on the Land Use Policy Map.

Staff response: Staff recommends the approach as outlined above and in the Draft Plan. The Planning Commission may wish to discuss other options for Institutional uses and direct staff as to how to address institutional uses on the land use map. Attention should be paid to those properties where a change in the land use map may lead to a new zoning recommendation, and staff will identify those properties during the work session. Any recommendation for a change in zoning for these parcels will be included in the planning areas portion of the plan.

Testimony on Office uses, definition, mapping, and zoning

Several pieces of testimony address the issue of planning for office uses. The issue reveals basic differences of opinion on the value of detailed land use planning. For instance, during the thirty-year build out of the office and research uses along Research Boulevard, the Planning Commission and land owners saw the value in having a category for Restricted Industrial/Office Park, which is the designation on the current Planned Land Use map. The Euclidian zoning that regulated land use in these areas was replaced in the 2009 Zoning Ordinance update to allow a mix of uses on all commercial properties, which is resulting in the development of new mixed-use projects on property that formerly had office uses.

The question for the Planning Commission is whether there are any areas of the city that the Land Use Policy Map should identify as preferred for Office (O), in order to ensure locations for office use; and how the city's planning and regulatory processes should be structured to maintain those uses. It should be noted that none of the city's mixed-use zones require a mix of uses, and all of them allow a conversion to residential-only, or retail-only use, regardless of location.

The Draft Plan allows for conversion of large segments of office and retail commercial land uses to new developments dominated by residential uses, through the ORRM land use designations; while some locations are mapped to show where office uses are required. The draft plan recommends that the majority of the Research Boulevard corridor be planned for Office (O), with some introduction of a new, walkable retail or residential uses (ORRM) at Gude Drive. No testimony was received by owners of property in the Research Boulevard corridor.

The Draft Plan also maps Office uses in close proximity to the west side of the Metro station in Rockville Town Center. A mix of office uses and residential uses is important to sustain retail and hospitality businesses in the Town Center throughout the day and evening. The draft plan has mapped Office on the blocks directly across from the Rockville Metro station and one other location with a large office building.

Exhibit 38 from a resident argues for the intermingling of residential, employment, and service uses, cautioning against "caving to the current market cycle that is driving residential build-

out.” The testimony notes that while the current market for office uses is weak, the retention of land planned for employment is important, and conversion of land on the plan for office uses to residential is “ominous . . . without another plan of where to cultivate it,” specifically mentioning such conversions in King Farm and Tower Oaks.

Staff response: Staff agrees that the plan should include areas planned for office employment uses.

A number of the pieces of testimony relate to the definition for Office uses (page 19) which reads:

O: Office is mapped where the city expects and prefers office uses. Retail uses are allowed on the ground floor. Residential or other uses are allowed only with Special Exception.

Also, there is a policy and action discussion of office uses on page 43; the text includes:

“Policy 16: Plan for office land uses in locations that have good access to the regional transportation network and other amenities.

Action 16.5: Revise the MXE zone to require office uses where the Land Use Policy Map specifies Office (O), and only allow residential uses in the MXE as a Special Use permit.”

Note that the definition for Office mentions a revision to the zoning ordinance for a Special Exception, while Action 16.5 mentions a Special Use permit. This inconsistency reflects an editing error, as well as a continuing discussion about the best approach to protecting and encouraging office uses.

Exhibit 23 is testimony from a land use attorney, suggesting that the Draft Plan’s definition of Office reads “very narrowly,” which the testimony claims is a “single, specific use itself, rather than a category of uses.” The testimony questions if the current mixed-use zoning on areas on the land use map as Office will still be applied, or if new zoning that restricts the use to only office uses will be reapplied as a return to “pre-2009 ideas.”

Exhibit 24 is testimony submitted by Tower-Dawson, LLC regarding the land use plan for the Tower Oaks area. The testimony supports the ORRM, or Office Retail Residential Mix, category for currently undeveloped land in the Tower Oaks PD area, but questions the Office definition that states: “Residential or other uses are allowed only with Special Exception.” The testimony also questions how zoning will be applied, while also recognizing this is less of an issue for them because Tower Oaks is in its own Planned Development.

Exhibit 41 is testimony from Lantian Development LLC, the owner of the property which is approved for the Shady Grove Neighborhood development on Shady Grove Road, Gaither Road, and Choke Cherry Road, and is zoned MXE. The testimony supports the ORRM land use for the property but requests that Action 16.5 state that a Special Use permit is only required for

proposed residential development on properties that are designated as Office on the land use map.

Staff response: Staff recommends striking the third sentence of the definition of Office that mentions a “Special Exception” and revising Action 16.5. A revised definition would read: “**O: Office** is mapped where the city expects and prefers office and other non-industrial uses that provide employment. Retail uses are allowed, generally on lower floors.”

Staff recommends that Action 16.5 be revised to “Explore the best method for encouraging and preserving office land uses in those areas mapped for Office (O) on the Land Use Policy Map.” One option would be to require some office space for each project on sites planned for Office, while recognizing other uses are allowed in the MX zones.

Exhibit 40, from WMATA, asks for a change on the land use map from Office to ORRM on the west side of the Rockville Metro Station property between the railroad tracks and MD 355, to allow more flexibility.

Staff recommendation: Retain the Office land use, as more broadly re-defined in this staff report, on the WMATA property between MD 355 and the railroad corridor. Staff recommends that residential uses not be planned for narrow properties between the busy highway and railroad tracks.

Exhibit 48 is testimony from Eldridge, Inc. the owners of 255 Rockville Pike, which is shown as Office on the draft Land Use Policy Map. Eldridge requests that the property, which is directly across MD 355 from Rockville Station, be mapped as ORRM to allow for more flexibility in future use.

Staff response: Staff recommends changing the mapping for 255 Rockville Pike to ORRM. However, staff also recommends that the planning areas section include a strong policy preference that employment/office, under the broader definition proposed above, be part of any project at this location. This plan guidance would inform any proposed change to the existing planned development for the site. While flexibility and a mix of uses has merit, it is also a site with superior access to transit and visibility on Rockville Pike, making it an excellent site for a major office development.

Testimony on the relationship between the Land Use Policy Map and the Zoning Map

Exhibit 23 is testimony from a land use attorney on the structure of the plan, with particular emphasis on the lack of information on how the land use plan will relate to zoning.

Exhibit 24, from Tower-Dawson LLC, asks how zoning will be applied to Tower Oaks to implement the land use plan, while recognizing that the area is cover by the PD-TO.

Exhibit 32, from a resident of Woodley Gardens, suggests that the city consider adopting form-based codes in areas near Metro, mentioning the current low-density single-family development patterns and the need to provide more housing, especially near transit.

Staff response: Staff recommends adding text to the beginning of the Land Use chapter (page 18) on the relationship between the land use policies and its associated map and the Zoning Ordinance and zoning map. It would explain that Land Use categories provide broad policy guidance, with the more-specific regulations being codified in zoning. For example, properties designated as Residential Attached (RA) in the Plan may have different zoning designations, based on circumstances specific to the neighborhoods; but the zoning would all be within the RA definitions.

In addition, the Planning Areas section, as Volume 2 of the Comprehensive Plan, will provide site- and area-specific recommendations on planned land use change and zoning recommendations for individual properties. For the vast majority of the city, the new Land Use Policy Map does not recommend any changes of land use, only changes in the categorization to consolidate similar uses and simplify the land use map.

The Rockville Planning Areas draft will indicate and discuss newly planned land use changes (i.e., those not identified in previous plans) sometimes for corridors or areas, and in other cases, for individual properties. The Plan's strategy for promoting new affordable housing is to map areas for additional housing diversity or mixed-use redevelopment, as well as to promote programs within the Housing element. Form-based zoning is not currently recommended.

Testimony on Parking Regulations

Exhibit 1 is from the owners of property at the southwest quadrant of the intersection of Chapman Avenue and Twinbrook Parkway. The testimony is in support of Policy 26, which is to undertake a study of minimum parking regulations, noting the high cost of structured parking, and the location of their property near transit.

Exhibit 16 is from a resident of Twinbrook who likes the idea of changing residential zoning from single-unit housing to also allow duplex housing, but notes that there are already "sometimes 3 or more vehicles per residential unit," and asks about where parking for additional units would be found.

Exhibit 24, from Tower-Dawson LLC, supports a reduction in minimum parking requirements, noting that the Tower Oaks office buildings are in compliance with the existing parking regulations with the result that "large portions of that parking go unused each day." The high cost of parking is passed on through leased space, making the property more difficult to lease.

Exhibit 27 from a resident of Twinbrook supports the intent of Policy 26 that recommends a study of parking regulations; however, the testimony argues that a study is unnecessary and instead recommends that "parking requirements be eliminated or greatly reduced."

Exhibit 31, from the Rockville Environment Commission, suggests adding additional actions on parking under Policy 26, including allowing businesses to pay a fee-in-lieu of parking that allows for shared parking between businesses and/or exchanges parking requirements for incentives for the use of public transportation. The testimony also recommends that the proposed parking study examine the potential effects of spill-over parking.

Exhibit 32 suggests that the city “de-couple parking costs from rent or overhaul parking requirements” in Town Center and the South Pike.

Exhibit 48, from the owners of 255 Rockville Pike, support Policy 26 and Policy 16, and Action 16.2 which recommends reducing parking minimums for office uses.

Staff response: Policy 26 and actions 16.2 and 26.1 to study parking regulations received wide support in the testimony and, while no changes to the Draft Plan are recommended, study of the issue should be prioritized.

Transit-Oriented Development

Exhibit 10 from a resident of Twinbrook supports more density in the Town Center to sustain a grocery store and local retail.

Exhibit 11 from the Maryland Department of Planning and the Department of Housing and Community Development supports the city’s commitment to transit-oriented development.

Exhibit 25, from the owners of 1488 Rockville Pike, supports the draft plan land use designation as ORRM, and requests a change in zoning from MXCD to MXTD, arguing that the property is located within a half mile of the Twinbrook Metro Station.

Exhibit 28 from a resident of the West End strongly supports transit-oriented development in the Town Center.

Exhibit 31 from the Rockville Environment Commission supports high-density mixed-use development near Metro station and believes height limits need to be raised in those areas.

Staff response: Transit-oriented development is supported by the plan and most of the testimony. No changes to the Draft Plan are recommended on this topic. Zoning is not addressed in the elements portion of the plan, but it will be discussed in each planning area.

A recent Urban Land Institute Technical Advisory Panel (TAP) study recommends considering increasing density in certain areas of Town Center. Staff believes that this study recommendation should be evaluated by the Planning Commission. The TAP gave a presentation on July 10th. A written report will be delivered to the city within the next 4-6 weeks. Staff can provide a briefing on the results of the study at this or an upcoming meeting.

Planned Development

Exhibit 18, from representatives of Woodmont Country Club, requests that the property be recommended for a PD zone for all portions other than the Rockville Pike frontage and frontage along Wootton Parkway. The testimony refers back to the approach in the 2002 Comprehensive Master Plan, which was written during a period when the city had a Planned Development zoning process and areas of “Comprehensive Planned Development” (e.g. King Farm, Falls Grove, Tower Oaks) on the Planned Land Use map. The Zoning Ordinance does not currently include a Planned Development process although the Draft Plan recommends establishing a flexible zoning procedure and a Planned Development approval process.

The Woodmont Country Club testimony also asks that Policy 25 in the Land Use element “Require that a conceptual master plan be completed prior to, or as part of, any development proposal involving Rockville’s three golf courses” be removed, in favor of providing for a PD process and zoning. The testimony requests that the Wootton Parkway frontage be designated for Residential Flexible.

Staff response: Policy 25 was included in the current draft at the direction of the Planning Commission during review of the Initial Staff Draft. The intent and goal of the policy requiring a conceptual master plan for golf courses is similar to the former PD process. As such, staff recommends amending Policy 25 to make it clear that a PD can serve as the conceptual master plan, as long as the PD is addressing the key concepts required, including open space, transportation infrastructure, environmental analysis, and other areas as detailed on p. 53 of the draft. In that way, the owners of the privately-owned courses (Woodmont and Lakewood) would have an opportunity to present their own proposals, under the regulatory framework of a PD, while the city can do its master plan for the RedGate site.

Staff also recommends two changes, on pages 52 and 53, in response to concerns that any proposed development on the golf courses, of any size, would require a full master planning process. There are more than 600 acres of total property on the two private golf courses, and staff believes that the plan should provide guidance on how small portions may be developed, even if the majority remains in the current uses.

Taking into account both issues raised, staff recommends that Policy 25 on p. 52 be changed to the following language: “Require that a conceptual master plan, which may include a Planning Development proposal, be completed prior to, or as part of, any development proposal of significant scale involving Rockville’s golf courses.”

On p. 52, staff recommends changing the last paragraph of the narrative, before the actions, to the following:

“The value of a master planning process, including a PD, is that it will consider the long-term implications of a series of development projects, so that the final results are part of a cohesive

whole that is integrated into the larger community. As such, development proposals, of any scale, for a change of use from private open space will require a Comprehensive Plan amendment, followed by the appropriate zoning. However, small-scale development proposals may not require a conceptual master plan (or PD) for the entire site if it is judged that the proposal does not conflict with the Plan or other city policies.”

Exhibit 31, from the Rockville Environment Commission, asks that the following text on page 50 be eliminated from the plan: “And yet, the rewrite of the Zoning Ordinance in 2009 did not include a planned development option and no new PDs have been created since.”

Staff response: No change is recommended. The sentence is factual.

Exhibit 31, from the Rockville Environment Commission, asks for a revision so that “an environmental analysis should be mandatory for all commercial sites and large residential sites (over 1-2 acres), not just large development sites.” The testimony also requests an addition (see underline) to the list for master plans (page 53) to include “an environmental analysis with identification of critical features for conservation and consideration of environmental impact.”

Staff response: No change is recommended. Staff believes that an environmental analysis implies consideration of environmental impact.

Exhibit 38 is from a Rockville resident who argues against Land Use Goal 9, and Policies 23 and 24. The testimony states that there were good reasons why the Planned Development zoning process and the floating zone (Policy 24) were removed from the Zoning Ordinance during the 2009 revision. The testimony includes a discussion of “amenity development options” (apparently from 2006) and why the writer believes that a flexible approach to project development that trades off value to the developer in the form of density or height for on-site and off-site amenities.

Staff response: No changes are recommended to the Draft Plan. Staff believes that Planned Development zoning is a good tool for major projects and large sites; however, consideration should be given to how the tool is implemented.

Community Node Concept

Exhibit 12 is from two Hungerford residents who discuss the difficulty accessing the Town Center, Metro, and businesses as a pedestrian, inducing more trips by car. They ask that the community node graphic include a node immediately south of the Rockville Metro station. They also ask for better pedestrian connections and facilities from the Hungerford neighborhood to Rockville Pike, and potential BRT stations at Mount Vernon Place and Edmonston Drive. They would like to see the existing car dealerships relocate to allow for expansion of Residential Attached uses between Mount Vernon Place and Ritchie Parkway.

Exhibit 45 is testimony from a Twinbrook resident with an address a few blocks south of Veirs

Mill Road. The resident asks for more walkable amenities in their immediate area and supports the development of a community node at Edmonston Drive and Veirs Mill Road. The testimony also suggests realignment of the Edmonston Drive intersection to a single intersection at Veirs Mill Road to increase pedestrian convenience and safety and to make the node more appealing for retail and bus rapid transit.

Staff response: The Walkable Community Node concept, pages 38 and 39, seems to have support from the community, as reflected by the testimony. The text notes that: “This mapping is somewhat subjective and not exhaustive, so other locations may function as nodes for some people, specifically along the MD 355 corridor.” Staff recommends keeping Figure 6 graphic as presented in the draft plan.

Exhibit 39 is from the owners of the Rockshire Village Shopping Center. The testimony requests that the land use for the 7.5-acre property be changed from Retail to Residential Attached that would allow for primarily residential uses with a small amount of retail or a community center.

Staff response: Staff recommends retaining the Retail mapping for this site at this time. The city engaged a consulting firm in spring 2019 to help determine the range of potential uses on the Rockshire Village Center site that would be acceptable to the property ownership and achieve an acceptable level of community support. Potential changes to the Land Use Policy Map for this site will occur with the Rockshire Planning Area portion of the plan which is expected to be reviewed by the Commission in the Fall.

Testimony on Public Park Designation on the Land Use Policy Map

Exhibit 4 is from the Montgomery County Department of General Services (DGS) addressing county-owned properties, including the county’s jury lot at 301 E. Jefferson Street and the Council Office Building parking garage behind 100 Maryland Avenue, which spans all 450 feet of the frontage along Monroe Street from Fleet Street to East Jefferson Avenue. The county is renovating this parking garage. The testimony is opposed to labeling the jury lot as a public park on the draft Land Use Policy Map, and to the ORRM mapping of the adjacent COB parking garage for future mixed-use development fronting the public park along Monroe Street. The testimony asks that the Land Use Policy Map be “removed from the draft.”

Exhibit 10, from a resident of Twinbrook, supports a large park that will attract people to Rockville.

Exhibit 12, from two residents of Hungerford, recommends that the city develop a plan based on the draft Land Use Policy Map to purchase private property and convert the county jury lot into new park space, noting that the jury parking can be consolidated at nearby parking garages. They ask for pedestrian access through the new park to the high school and to Elwood Smith Community Center.

Exhibit 13 is from CBT Associates, owners of property at 200-A and 200-B Monroe Street. CBT Associates argues against the proposed land use designation of Public Park for the property, based on the current use of the property for offices and the current mapping as Preferred Office on the current Planned Land Use map. The testimony requests a land use designation of Office Residential Retail Mix (ORRM) instead of Public Park.

Exhibit 18, from Woodmont Country Club, requests that: “Any recommendation for a park on the club property contain clarification that the need, size and location of the park would be determined if all or a substantial portion of the property redevelops.” This is in reference to an asterisk placed on the club property on the Land Use Policy Plan map with annotation in the map legend that reads: “Potential Park (location TBD)”.

Exhibit 40 from WMATA discusses the mapping of Public Park along Chapman Avenue and the railroad corridor, including property owned by WMATA, which is currently a stormwater retention facility. WMATA is promoting the conversion of land in the Twinbrook Station area to transit-oriented development and requests that the property they own between Bouic Avenue and Thompson Avenue along the tracks, and the parcels they do not own along Chapman be designated as ORRM, rather than Public Park. WMATA instead suggests that small open spaces could be dispersed through the immediate station area and recreational facilities could be located on parking garage rooftops as part of redevelopment projects.

Exhibit 45 is testimony from a Twinbrook resident requesting that the plan allow for opening Hillcrest Park to Veirs Mill Road to promote greater use of the park.

Staff response: Staff recommends that the Planning Commission receive legal advice from the City Attorney’s Office in a closed session regarding the Public Park land use designation. If any changes to the Draft Plan are required, the changes should be discussed in open session.

Testimony on single issues, single sites, small changes, etc.

Exhibit 11, from the Maryland Department of Planning, suggests adding “condominium” in addition to “apartment” buildings to describe multiple dwelling units in the definition of Residential Multiple Unit on page 19.

Staff response: The definition of Residential Multiple Unit (RM) notes that “apartment buildings” are defined as construction types with shared corridors and entrances. Condominium indicates an ownership condition rather than a construction type. Staff recommends retaining the text as drafted.

Exhibit 11, from the Maryland Department of Planning, references the mapping of a new higher-density zoning district, which the draft plan says would be “limited to areas designated for Residential Multiple Unit uses on the Land Use Policy Map, and only where higher densities are deemed appropriate.” The testimony suggests that the city clarify if this yet-to-be-created higher density residential zone could also be applied to land designated for RF, RRM, ORRM and

RO.

Staff response: This future zone is intended to be a higher density residential zone, not a mixed-use zone. Therefore, it may be appropriate for RM and RF, but not the other land use categories. Zoning recommendations are not included in the Elements portion of the Draft Plan.

Exhibit 20 is from the owner of 100 S. Adams Street who supports the land use designation of Residential Office (RO) for his property at the corner of West Jefferson Street and South Adams Street and zoning that would allow this property to be used as offices.

Staff response: The draft plan recommends retaining the land use designation RO.

Exhibit 14, from a Rockville resident, discusses the threat of “increasing income disparity” and asks for a goal to “build a stronger middle-class base of economically secure Rockville residents. Testimony supports land use designations and creative urban design “for high density housing” that would allow Montgomery College graduates, with incomes in the \$25,000 to \$75,000 range, to be able to afford to live within the city.

Staff response: Policies in the Land Use and Housing elements promote a diversification of housing types and a housing stock that can offer more affordable choices. The new planning area draft for the area around Montgomery College will also discuss opportunities and demand for housing to serve students.

Exhibit 37, from the King Farm Citizens Assembly, supports Policy 20 for the city to “support retail uses along Rockville’s commercial corridors and other shopping areas” and specifically mentions the plan language regarding “off-site signage” for shopping areas not visible from major arterials, which is the case with the King Farm Village Center.

Staff response: Staff concurs.

Exhibit 38, from a Rockville resident, refers to current (2002) plan’s “Critical Parcels, recommends a way of defining these sites, and suggests sites that may be deemed critical and why.

Staff response: The Draft Comprehensive Plan is comprehensive in scope and based on a detailed analysis of the land use and transportation systems across the city. Some ‘critical parcels’ as discussed in previous plan documents have remained static in their use over many decades, while other parcels not identified in the 2002 plan have experienced dramatic land use change. Staff recommends the Draft Plan’s approach that looks at the large-scale structure of land use in the Elements section of the plan, with additional detailed discussion of sites and areas where land use change is planned in the Planning Areas portion of the Plan.

Typographical errors

A few exhibits point out typographical or word choice errors. Staff will correct these errors as noted.

PUBLIC OUTREACH:

After the Draft Plan release on March 14, 2019, staff initiated a public information program. The draft is posted on the city's Web site, at <http://www.rockvillemd.gov/203/Rockville-2040-Comprehensive-Plan-Update>. It was sent to the State Clearinghouse within the Maryland Department of Planning, relevant public agencies, and adjoining jurisdictions. Staff held two informational meetings, prior to the public hearings, to assist the public in understanding both the Draft Plan and the methods by which written and oral testimony could be provided.

Staff also offered to visit with any community, business and other organizations, including City Boards and Commissions, that wished to have a presentation regarding the draft plan and on how to provide testimony. Staff visited with many and has made many informational presentations.

In addition, staff worked with the city's Public Information and Community Engagement office to provide information through Rockville Reports, Rockville 11, social media, and listserv emails to provide information on the Draft Plan content, public hearing dates, methods to provide testimony, and to keep the public updated on the process.

At a broader level, the Draft Plan is the result of extensive community input that was gathered over a multi-year period, and continues to the present, in a process known as "Rockville 2040." That process is summarized in the Introduction chapter of the Public Hearing Draft, but includes a kick-off meeting, 35 Listening Sessions, 4 Citywide Forums, 3 Open Houses, 2 Information Sessions, and many meetings with community members, community organizations, and other stakeholders as warranted. Staff has been available to talk and meet with any member of the broad Rockville community, including but not limited to residents, business owners, workers, representatives of non-profit organizations, and representatives of governmental and quasi-governmental agencies.

BOARDS AND COMMISSIONS:

City boards and commissions participated in many of the public meetings held during the Rockville 2040 process; and city staff have attended various meetings of boards, commissions and other organizations (e.g. Rockville Economic Development, Inc., Rockville Housing Enterprises, etc.) to obtain their input. The Planning Commission may choose to include boards and commissions in work sessions, on various topic areas.

NEXT STEPS:

The next work session on the Draft Comprehensive Plan is scheduled for August 7. The Environment and Water Resources Elements are tentatively scheduled for Planning Commission review and discussion.